## United States Court of Appeals for the Second Circuit



**APPENDIX** 

# 75-6061

### IN THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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ANTHONY A. BERSANI,
Plaintiff-Appellant

V.

UNITED STATES OF AMERICA, Defendant-Appellee APPEAL FROM A JUDGMENT AFTER TRIAL OF THE NORTHERN DISTRICT OF NEW YORK

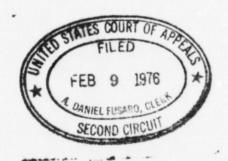
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DEFERRED JOINT APPENDIX

SHELDON G. KALL
Attorney for Plaintiff-Appellant
3522 James Street
Syracuse. New York. 13206

TO:

GILBERT E. ANDREWS
ELMER J. KELSEY
JEFFREY S. BLUM,
Attorneys
Department of Justice
Washington, D. C. 20530



PAGINATION AS IN ORIGINAL COPY

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v.

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Attorney for Plaintiff-Appellant
3522 James Street
Syracuse, New York, 12,06

TO:

JEFFREY BLUM,

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Department of Justice
Washington, D. C. 20530

#### TABLE OF CONTENTS

Docket Entries

Judgment

Memorandum Decision and Order

Summons and Complaint by the Plaintiff

Answer by the Defendant

Stipulation and Order for Change of Defendant

Stipulation and Order Reducing Counterclaim

Transcript of Record - Pages 8-203 inclusive

Plaintiff's Exhibit #3

1970   Feb. 13   Filed complaint-issued summons-original-5 copies & forwarded to Marshal for serving 26   "Summons served by certified mail Feb.13.1970 on Comm. of Internal Revenue."   Certificate No. 091666; served Feb.13.1970 on Comm. of Internal Revenue."   Certificate No. 091666; served Feb.13.1970 on Attorney General by certified Certificate No. 091666; served Feb.13.1970 on Comm. of Internal Revenue.   Certificate No. 091666; served Feb.13.1970 on Comm. of Internal Revenue.   Certificate No. 091666; served Feb.13.1970 on Authory General by certified Certificate No. 091666; served on Faul French, Asst.U.S.Atty for Comm. Internal Revenue on Feb. 17, 1970   April 15.   Answer		Anthony A. Bersani vs. Commissioner of Internal Revenue	
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D. C. 110	Rev. C	Ivil Docket Continuation	
197	-	PROCEEDINGS	Date Ord Judgment
Nov.	19	Filed Memorandum-Decision and Order (11/18/74) dismissing complaint directing defendant have judgment on its counterclaim in sum of \$15,120.62 with interest, less credits or payments made subsequents.	
		to Sept. 3, 1970, amount of judgment and interest to be agreed parties or settled on three days written notice within thirty of from date hereof-HON. E.PORT, USDJ	on by
Dec.		" Stipulation and Order extending time for entry of judgment to including Jan. 31, 1975-HON.E. PORT, USDJ	and
197	-		
Feb.		" Stipulation and Order extending time for entry of judgment to including April 30, 1975	and
Apr.	30	Filed Judgment against plaintiff and in favor of defendant in the amount of \$10,308.90, plus interest from January 1, 1967 and	
Tune	12	\$1,11302, without interest, together with costs Filed Notice of Appeal	
July	16	Filed Scheduling Order.	
July	25	Filed copy of Civil Appeal Scheduling Order 2	
Oct.1	7	Sent Certified copy of Record on Appeal to CCA, 2nd Cir	<b> </b>
Oct.2	23	Filed Receipt of papers from C.C.A. Second Circuit	
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UNITED STATES COUNT OF APPEALS SECOND CIRCUIT

(Case Title)

This Court, Honorable Edmund Port, District Judge, presiding. having considered the evidence and arguments of counsel. and having entered a Memorandum-Decision and Order dated November 18, 1974; and

Further, that Memorandum-Decision and Order having ordered that defendant have judgment upon its counterclaim against plaintiff in the sum of \$15,120.62, with interest, less any credits or payments made; and

Further, the parties having agreed that plaintiff is entitled to a credit of \$4,811.72 as of December 31, 1966; and

Further, that interest on the above \$15,120.62 from October 8, 1965, to and including December 31, 1966 amounted to \$1,113.02, it is

ORDERED, that defendant have judgment against plaintiff for \$10,308.90, plus interest thereon as provided by law from January 1, 1967, together with judgment for the additional amount of \$1,113.02, exclusive of any interest thereon, together with costs as provided by law.

UNITED STATES DISTRICT JUDGE

Approved as to form:

s/ Sheldon G. Kall Sheldon G. Kall, Esquire 3522 James Street Syracuse, New York 13206

s/ Donald T. Fish
Donald T. Fish, Esquire
Tax Division
Department of Justice
Washington. D. C. 20530
Attorney for Defendant

UNITED STATES COURT OF APPEALS SECOND CIRCUIT

(Case Title)

EDMUND PORT, J.

#### APPEARANCES:

SHELDON G. KALL, ESQ. 3522 James Street Syracuse, New York 13206 Attorney for Plaintiff

SCOTT P. CRAMPTON
Assistant Attorney General
RONALD R. ANDERSON
ROBERT M. ADLER
Attorneys
Department of Justice
Washington, D. C. 20530

JAMES M. SULLIVAN, JR. United States Attrney Federal Bulding Syracuse, New York

Attorneys for Defendant

#### Memorandum-Decision and Order

Plaintiff, taxpayer Anthony Bersani, brought this suit for a refund of \$212.64, which was paid to the defendant inpartial satisfaction of a one hundred percent penalty assessment levied upon plaintiff for willful failure to pay withholding taxes on wages paid by Auto Dynamics of Syracuse Inc. The United States counterclaimed for the balance of the penalty assessment which, by stiuplation, was attributable entirely to the fourth quarter of 1963 and the third quarter of 1964, in the amount of \$15,120.62 plus interest, less any payments or credits made subsequent to September 3, 1970. After a trial to the court, for the reasons herein, judgment will be entered dismissing

the plaintiff's claim and granting the judgment for the counterclaim.

Plaintiff Bersani is a lawyer, real estate developer and manager who, among other ventures, promoted, through Primex Equities Corporation, an automotive center known as the Midtown Car Center--several independent specialty shops selling and servicing such itemsas mufflers, tires, brakes, etc. Patterned after medical clinics, Auto Dynamics was the first stop for the ailing car. Its problems were diagnosed there and it was referred to the various specialty shops for repair and service. Primex stood in the position of landlord of the entire enterprise.

The failurae to pay taxes withheld from wages of employees of Auto Dynamics of Syracuse, Inc., the resjonsibility for which was later case upon the plaintiff, gives rise to this suit. Since the concept of the Center envisioned Auto Dynamics as the controlling and key point of the enterprise, plaintiff intended to control it rhough stock owner= ship with his partner, a Mr. Low. However, when he was advised by New York City counsel that such ownership, coupled with ownership in Primex, would run afoul of the S.E.C. rules, he issued instructions to counsel to put the stock ownership of Auto Dynamics equally in Mrs. Low's and his wife's names. In like manner, he designated other employees of Auto Dynamics as its officer. As a matter of record, he was neither stockholder officer or director of Auto Dynamics. He contends that his sole relationship with Auto Dynamics was that of landlord through his control of Primex. The evidence, however, indicates Bersani was exerting practically complete control over the operation of Auto Dynamics. He was the boss. To find otherwise would require the court to join the plaintiff's masquerade. The lack of record association with Auto Dynamics did not insulate him against liability for the assessment being enforced. See, Pacific National Insurance Co. v. U. S., 422 F.2d 26, 30-31, n. 10 and 11 (9th Cir. 1970)
cert. den. 398 U.S. 937 (1970) reh. den. 400 U. S. 883 (1970);
Silberberg v. U.S., 355 F.Supp. 1163, 1166-1167 (S.D.N.Y. 1973).

Auto Dynamics appears to have had little or no capital. It operated on money supplied by Bersani the disbursement of which was directed and controlled by him. In view of his activities in the operation of Auto Dynamics his claim that his relationship with Auto Dynamics was limited to one of landlord and tenant has a particularly hollow ring. Bersani exercised virtually complete control over the hiring and firing of employees and officers of Auto Dynamics; made decisions as to the payment of crecitors. It was Bersani who determined who should be paid and who not.

Weekly reports of conditions were transmitted to Bersani, who determined how available funds were to be disbursed in a manner most advantageous to the continuance in business of Auto Dynamics. He allocated the "grease" to be applied to the "squeaky wheels".

In spite of the availability of substantial sums from sales, loans or contributions to capital, depending on how Bersani's advances are to be treated, and loans from other sources, Bersani directed payment to others and permitted the withholding taxes to remain unpaid. The greater part of the proceeds of a bank loan obtained in the name of another Bersani corporation and deposited in Auto Dynamics bank account for the ostensible purpose of paying its delinquent withholding taxes was, instead, applied by Bersani to repayment of a loan to him personally.

The parties have no serious digute as to the applicable law, except on the question of where the burden of proof lies. Each claims the burden rests on the other.

It is not necessary to consider upon whom the burden of persuasion rests, since the proof is not only insufficient if it rests with the plaintiff, see. Psaty v. United States, 442 F.2d 1154 (3rd Cir. 1971); but it affirmatively establishes that even if the burden of persuasion was on the defendant, it has carried it satisfactorily. The proof supports the conclusion that the plaintiff is liable on the counterclaim as a responsible person who willfully failed to collect, account for and pay over withholding taxes on employees of Auto Dynamics of Syracuse Inc. for the fourth quarter of 1963 and the third quarter of 1964, pursuant to 26 U.S.C. Sections6671(b) and 6672.

This Memorandum-Decision and Order shall constitute the findings of fact and conclusions of law.

The court having jurisdiction of the subject matter and the parties hereto, for the reasons herein it is

ORDERED, that the complaint of the plaintiff herein be and it hereby is dismissed; and it is further

ORDERED, that the defendant have judgment upon its counterclaim against the plaintiff in the sum of \$15,120.62, with interest, less any credits or payments made subsequent to September 3, 1970; and it is further

ORDERED that the amount of said judgment and interest thereon be agreed upon by the parties or settled upon three days written notice at the chambers of the undersigned at Auburn, New York, within thirty days from the date hereof.

Edmund Port
United States District Judge

Dated November 18 1974 Auburn New York UNITED STATES COURT OF APPEALS SECOND CIRCUIT

(Case Title)

To the above-named Defendant:

You are hereby summoned and required to serve upon SHELDON G. KALL, plaintiff's attorney, whose address is 3522 James Street, Syracuse, New York, an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon the United States Attorney for the Northern District of New York, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Dated: December 16, 1969

Clerk of Court

s/ Sheldon G. Kall

SHELDON G. KALL Attorney for Plaintiff Office & P. O. Address 3522 James Street Syracuse, New York UNITED STATES COURT OF APPEALS SECOND CIRCUIT

(CaseTitle)

The plaintiff, complaining of the defendant alleges as follows:

- 1. The plaintiff is a resident of the County of Onondage and the State of New York. The defendant is a division of the United States Government.
- 2. On or about the 15th day of October 1968, the plaintiff was assessed the sum of \$19,273.04 as a 100% penalty for payroll taxes owed by Auto Dynamics of Syracuse, New York.
- 3. That the plaintiff paid the sum of \$212.64 being a partial payment of that assessment, a receipt of which is attached and made a part of this complaint.
- 4. Thereupon, a claim for refund was made which was disallowed for refund of this paid tax, a copy of said claim being attached and being made a part hereof. That the original assessment was erroneous since the plaintiff was neither an officer, stockholder nor person in position of the corporate record and was not a person responsible for this payment.
- 5. That this assessment should be abated and the sum paid be refunded.

WHEREFORE, plaintiff demands payment against defendant in the amount of \$212.64 with interest from the 14th day of October 1968; that the assessment of \$19,273.04 be abated and for such further relief as to this court may seem just and proper.

Dated: December 16, 1969

SHELDON G. KALL
Attorney for Plaintiff
Office & P. O Address
3522 James Street
Syracuse, New York 13206

Telephone 315-437-3321

(Case Title)

#### ANSWER

Comes now the defendant, the Commissioner of Internal Revenue, by its attorney, James M. Sullivan, Esquire, United States Attorney for the Northern District of New York, and answers the plaintiff's complaint as follows:

- 1. The defendant admits the allegations contained in the first sentence of paragraph 1 of the complaint. The defendant states in response to the second sentence of paragraph 1 of the complaint that the complaint improperly named the Commissioner of Internal Revenue as defendant instead of the United States of America, and requests that this Court order that the pleadings be amended to substitute the United States as defendant. pursuant to Section 7422(f)(2) of the Internal Revenue Code of 1954 (Title 26, U.S.C.).
- 2. The defendant denies the allegations contained in paragraph 2 of the complaint, and states that its records indicate that the assessment was made on October 8, 1965.
- 3. The defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the complaint, and states that no copy of receipt was attached to the complaint.
- 4. The defendant admits in response to the allegations contained in the first sentence of paragraph 4 of the complaint only that a claim for refund was made and disallowed, but denies that a copy of such claim was attached to the complaint, and further denies each and every allegation contained in the claim for refund that was filed unless expressly admitted elsewhere in this answer. The defendant denies the

the allegations contained in the second sentence of paragraph 4 of the complaint.

5. The defendant denises the allegations contained in paragraph 5 of the complaint.

#### COUNTERCLAIM

- 1. This counterclaim is brought under the authorization of Chief Counsel, Internal Revenue Service, and at the direction of the Attorney General of the United States, pursuant to Section 7401 of the Internal Revenue Code of 1954 (Title 26, U.S.C.).
- 2. On October 8, 1965, the District Director of Internal Revenue made an assessment against plaintiff in theamount of \$19,273.04. Said assessment was based on Section 6672 of the Internal Revenue Code of 1954 on account of employment taxes required to be withheld by Auto Dynamics of Syracuse, Inc., for the last quarter of 1963 and for the third and fourth quarters of 1964.
- 3. A total of no more than \$212.64 has been paid or collected on the assessment, leaving a balance due of at least \$19,060.40, plus interest.
- 4. Despite due notice and demand for payment made upon plaintiff, there remains unpaid and still owing to the United States of America, the sum of at least \$19,060.40, plus interest and costs, and whatever other sums are shown to be owing, and grant such other relief as this Court deems just and proper.

United States Attorney

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

(Case Title)

STIPULATION AND ORDER FOR CHANGE OF DEFENDANT

The undersigned attorneys for the parties herein do hereby stipulate and agree to an order without any further notice, substituting

United States of America as the proper defendant in place and instead of the Commissioner of Internal Revenue.

Dated: March 22, 1971

S/ Sheldon G. Kall

s/ James M. Sullivan, Jr.
United States Attorney

Attorney for Plaintiff

SO ORDERED

s/ Edmund Port
U. S. District Court Judge

Dated: 4/1/1971

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

(Case Title)

#### STIPULATION AND ORDER

It is hereby stipulated by and between the parties hereto, plaintiff Anthony A. Bersani and defeneant United States of America. by their respective counsel, subject to the approval of the Court, as follows:

- 1. Counsel for both parties were in error in indicating to the Court immediately prior to trial that the withholding tax quarters involved were the fourth quarter of 1963, the first quarter of 1964 and the second quarter of 165. In reality, assessments were made against plaintiff Anthony A. Bersani for the fourth quarter of 1963, the third quarter of 1964 and the fourth quarter of 1964, as alleged in the Government's original answer served and filed on or about April 14, 1970. Accordingly, Government counsels' oral amendment of the answer at trial to change the third and fourth quarters of 1964 to the first and second quarters of 1964 was inappropriate and should not have been made.
- 2. The parties agree that the amendment of answer should be disallowed, and that the Government's original answer should be reinstated as originally worded so that the quarters in issue are the last quarter of 1963, and the third and fourth quarters of 1964.
- 3. The withholding tax deficiencies of the corporation for which the penalty assessment against plaintiff Anthony A. Bersani was made were in the amounts of \$13,082.66 for the fourth quarter of 1963,

\$3,446.40 for the third quarter of 1964, and \$2,743.98 for the fourth quarter of 1964, for a total of \$19,273.04. Through subsequent payments and credits through September 3, 1970, the penalty of \$19,273.04 had been reduced by that date to a balance outstanding of \$17,864.60, plus interest thereon. Any additional payments or credits that may have been made subsequent to that date are now known by the parties at this time but will be taken into account in determining final judgment in this action.

4. It is further agreed that the defendant, the United States of America, may hereby dismiss, with prejudice, that portion of its counterclaim relating to the fourth quarter of 1964, in the amount of the entire assessment attributable entirely to that quarter of \$2,743.

98. Accordingly, the amount remaining in the Government's counterclaim should be reduced by \$2,743.98 from the balance still owing on the assessment of \$17,864.60, plus interest, on September 3, 1970, to \$15,120.62, plus interest, attributable entirely to the fourth quarter of 1963 and the third quarter of 1964, less whatever payments or credits are made subsequent to September 3, 1970.

United States Attorney

s/ Sheldon G. Kall
Sheldon G. Kall
Attorney for Plaintiff

SO ORDERED:

United	States	District	Court	Judge
Dated:				

1 MR. GROSSMAN: The last quarter of '63 2 and the first two quarters of 1964. THE COURT: The counterclaim here refers 3 to the third and fourth quarters of 1964. 4 MR. GROSSMAN: Well then, your Honor, 5 I move at this point to amend the answer. 6 I didn't realize that. 7 THE COURT: Well look at your answer and see. 10 MR. GROSSMAN: Your Honor, that is an error. It should be the first and second quarters 11 cr 1964. 12 THE COURT: Is there any dispute about 13 that? 14 MR. KALL: No, your Honor. 15 THE COURT: All right, the amendment 16 is granted. Paragraph 2 of the counterclaim is 17 amended by deleting the words, third and fourth, 18 from the last line of that paragraph and inserting 19 in their place instead, first and second. 20 MR. GROSSMAN: Thank you, your Honor. 21 THE COURT: All right. 22 DIRECT EXAMINATION 23 BY MR. KALL: 24 Would you state your name and address? 25

	#	(bersani - litrect) 10
1	A	No.
2	Q	Or office buildings?
3	A	No.
4	Q	Now getting back to the Midtown Car Center. Did there
5		come a time when a corporation which you were involved
6		bought come property?
7	A	Primex Equities bought the property from the New York
8		Central Railroad.
. 9	Q	That is Primex Equities Corporation?
10	A	That is Primex Equities Corporation.
11	વ	And at that time you were the President of that
12		Corporation?
13	A	Yes.
14	Q	What were the plans of Primex Equities Corporation for
15		the development of this project?
16	A	We added some 40,000 feet to the old passenger terminal
17		We bought the adjoining property on each side of it,
18		east and west, and we bought a one-story building and
19		the plan was to have a complete auto center where a
20		person could bring his car in and have it serviced in
21		every way by speciality shops. In other words, each
22		segment would be an expert in say, brakes, mufflers,
23		body and so forth.
24	Q	Did you intend to develope this shopping center as a
25		THE COURT: Shopping center or auto-

#### motive center?

sorry.

2

MR. KALL: Automotive center.

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#### BY MR. KALL:

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Did you attempt to develope this automotive center on behalf of Primex as a rental property?

The idea was -- we are not too far off calling it a shopping center -- we handled it like a shopping center. We had individual stores and we were leasing to various people who were expert in the automotive field, and the idea was to develope a rental situation to p y the first mortgage, which was a million eight with a pension fund, and to leave a little profit just like shopping center and real estate development.

Q ne mortgagor on the property?

That is the First Trust and Pension Fund in Providence, A Rhode Island. I guess they are located.

Did you engage or hire any employees specifically to Q work on the leasing of the Car Center?

The leasing was being done by myself, Mr. Zolo and brokers. We took tenants from Primex that might bring in people.

At what time did you or any of your Corporations hire Q Mr. Slepan?

Mr. Slepan was hired practically at the outset, and it A

Direct)

(Bersani -

1	was at his he was selling dynomometers, I believe.
2	THE COURT: Selling what?
3	THE WITNESS: Dyromometers. This is a
4	machine that performs dynamistic service is
5	that the word I want? It would tell you what is
6	wrong with your car. And we bought a dynamometer
7	maybe two of them and Mr. Slepan came
8	to work. I brought him in to oversee this entire
9	project, coordinate the various stores and
10	to make the thing work as a shopping center for
11	the fixing of cars, really.
12	BY MR. KALL:
13	Q What entity would he have been an employee of?
14	THE COURT: Would he have been or was?
15	MR. GROSSMAN: Yes. I will object to
16	that.
17	MR. KALL: All right.
18	BY MR. KALL:
19	Q At that time when he first began to work, what
20	company was he in?
21	A I believe after the first time it was Bersani Realty
22	who was paying his wages; at the end it was
23	this auto dynamics corporation.
25	Q Did there come a time
20	THE COURT: When you say "Auto Dynamics

1	Corporation," is that the company for whom he
2	was selling these dynamometers?
3	THE WITNESS: No. He left the company
4	that he was selling the dynamometers for.
5	THE COURT: I just wanted to clear that
6	up because of the similarity in names.
7	Mr. GROSSMAN: Your Honor, Auto Dynamics
8	is the corporation that we are involved with here.
9	TIE COURT: I am aware of that.
10	BY MR. KALL:
11	Q Did there come a time strike that. Was your leasing
12	ple: successful?
13	A Well, we leased probably 85 or 90 percent of the facility.
14	Q Could you name sold of the tenants?
15	A Well, for example, we had a body and fender repair run by
16	a young man named Dispinsie. The manufacturer was a
17	fellow right here from Auburn - Kerr, I think it was.
18	We had an appraisal service. I forget that man's name,
19	We had a tire company. We had a gas station, of course.
20	An Oil company in there a gas station. We had a
21	car wash. We had, oh, another outfit that fixed
22	trensplantions.
23	Q I think got is enough.
24	A We had a foreign car sales there, because I bought one Ja-

guar and it didn't work too well.

1	Q Do you recall at what time the corporation known as
2	Auto Dynamics was formed?
. 3	A I can't pinpoint it. It was '61 or '62. But I am no
4	sure.
5	Q All right. Do you recall under whose direction this
6	corporation was formed?
7	A You did. As I mosall it, you formed it.
8	MR. GROSSMAN: I am sorry. Would you
9	repeat thet please and have the witness speak up
10	(The Court Reporter repeated the ques-
11	tion as above recorded.)
12	THE WITNESS: Mr. Kall did the legal
13	work in the forming the corporation originally.
14	BY MR. KALL:
15	A At the time of the formation of the corporation, what
16	was your intention as to stock ownership?
17	A At the very beginning?
18	Q Yes.
19	A Because this dynamometer part was to go to the entire
20	part of the thing, I was to control it, but Mr. Low
21	was my partner, but we changed it, as you know.
22	Q In other words, you and Mr. Low intended to be the
23	participants and owners of Auto Dynamics Corporation;
24	is that correct?
25	

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A Yes.

Q Do you recall how soon was that after the Corporation was formed that your intention was changed?

A Well, within a week or ten days.

MR. GROSSMAN: Your Honor, I am going to object, I think he is leading the witness.

THE COURT: Yes.

BY MR. KALL:

Q Did you change your intent at any time?

A Yes I did. I remember calling you and telling you ---

THE COURT: What did you do?

Rosenbloom, our attorney in New York, who was with MARSHAL, GERBER, LENOX, BAKER and GREEN, a law firm in New York City that had -- who were our attorneys when we went public with Primex Equities, and they advised me that it was not possible for either myself or Mr. Low, either singly or jointly, to have anything to do with a situation where we ran a segment of this Car Center. That by the rules of S.E.C., this wasn't the thing to do, and I advised you, I distinctly recall I was very agitated about, and calling you and telling we

MR. GROSSMAN: I am going to object on

couldn't do it that way. It was then ---

1	on the grounds of hearsay, your Honor.
. 2	THE COURT: Sustained. It is self-
3	serving.
4	THE WITNESS: How can it he hearsay
5	when I did
6	THE COURT: It is a self-serving
7	declaration. If you want to practice law, I will
8	let you practice.
9	THE WITNESS: No sir. I don't want to
10	practice the law.
11	MR. KALL: Mr. Bersani is a graduate
12	of the Syracuse law school.
13	THE COURT: That is why I made my offer.
14	I heard that.
15	BY MR. KALL:
16	Q After that time did you strike that. Was Mr. Slepan
17	in your employ at that time?
18	A Yes he was.
19	Q Was there a Mr. Tambs in your employ at that time?
20	A Yes.
21	Q What were the duties of Mr. Slepan?
22	A Mr. Slepan had a kind of management of the Car Center.
23	Q And what was Mr. Tambs's duties?
24	A Mr. Tambs worked in my real estate office as an
25	accountant as a bookkeeper. Then he went to work

1		as a bookkeeper in this Auto Dynamics, but I can't
2		pinpoint the exact time.
3	Q	Did you have any conversation with Mr. Slepan and, or
4		Mr. Tambs relative to the operation of the Auto Dynamics?
5	A	Yes. Surely.
6	વ	Do you recall when and where?
7	A	I had many conversations with Mr. Slepan on the
8		operation, on the leasing
9	ବ	I am not specifically referring right at this time to
10		the formation of the Corporation. Let's strike that.
11		Did you turn over your interest, whatever it was, in
12		the Corporation to anybody?
13	A	I turned it over to the employees at that time.
14	Q.	And what employees were there?
15	A	The only two I could swear to were Petrica and Slepan.
16		I don't know if Tambs was there at the time. I told
17		Bob Ungerman, who worked for me, to get rid of it and
18		give it to the employees because we couldn't operate
19		it as our own. And to that eni, I got Carl Guy to
20		handle it.
21	Q	Mr. Bersani, at this time was the Car Center completed?
22	A	I would say almost completed. These things never did
23		get really completed.
24	Q	Was a dynamometer purchased and installed?
25	A	Oh yes. Sure.

1	Q Who paid for the dynameter?
2	A The Primex Equities Corporation furnished and paid
3	for the equipment in that part of the Car Center as it
4	did for some other parts of the Center.
5	Q Was a lease entered into between Auto Dynamics and
6	Primex?
7	A Yes it was.
8	Q Do you recall the date of the lease?
9	A No.
10	Q Would these leases include
11	THE COURT: Well,?
12	MR. KALL: I am sorry.
13	THE COURT: Go ahead.
14	BY MR. KALL:
15	Q Did this lease include the use of the equipment in
,16	the Car Center?
17	A Yes it did.
18	THE COURT: Have you got the lease?
19	MR. KALL: Your Honor, the lease was
20	taken by the bankruptcy court and I have been
21	unable to obtain a copy.
22	THE COURT: If it is in the possession
23	of the bankruptcy court, it seems to me we could
24	get it if you want it.
	MR. KALL: Your Honor, I wrote to Utica

1 New York ---THE COURT: That bankruptcy was in Utica and I know because I dismissed it a couple of 3 times out of Utica and they made abortive attempts after that and there was some proceedings in New 5 York, I believe. 6 MR. KALL: Yes. THE COURT: For some reason there was 8 some rulings in New York. There was a petition 9 filed here on one or two occasions that I can 10 recall and I dismissed them as the papers were 11 identical in the Southern District of New York. 12 13 MR. KALL: Your Honor, I attempted for six months to obtain copies of documents. 14 THE COURT: All right. 15 16 BY MR. KALL: 17 Q Now mr. Bersani, at the time that you were -- after 18 this time, the early part of '63, were you also in a planning stage of developing any other products? 19 20 We were trying to complete an office building in Syracuse. 21 And where was that located? Q 22 A On the corner of Warren and James Street, downtown 23 Syracuse. 24

And what was that office building to be known as?

Q

	1	
1	A	The Primex Building.
2	Q	Had you received a mortgage commitment?
3	A	I had a mortgage commitment from Sixty Trust, again
4		for \$8 million, and we had a building loan from the
5		First National Bank of Boston.
.6	Q	Was this Sixty Trust the same mortgagee that had the
7		mortgage on the Car Center?
8	A	Yes.
9 '	9	I see. Now when after the Car Center opened, was it
10		success_ul?
11	A	It did a lot of business.
12		THE COURT: When you refer to the
13		Car Center, Mr. Bersani
14		THE WITNESS: (Interrupting) Yes sir.
15		THE COURT: You are referring to the
16		entire project?
17		THE WITNESS: Yes sir.
18		THE COURT: When you say "did a lot of
19		business" you are referring to the fact that you
20		had a substantial tenant occupancy.
21		THE WITNESS: We had probably ninety
22		percent rented, and the response was good.
23		THE COURT: That was your business to
24		rent?
25		THE WITNESS: Yes.

1	THE COURT: A matter to conduct, say
2	installing fenders.
3	THE WITNESS: I didn't know the first
4	thing about, no, except to know it as a Car
5	Center. We leased it. Mr. Zolo is here. We did
6	a lot of leasing. One of the difficulties was
7	that the Car Center did too much business in the
8	beginning and they weren't prepared for the
9	credit that had to be given to customers.
10	THE COURT: You are now talking about
11	your tenants?
12	THE WITNESS: Yes. With the parts.
13	They apparently didn't have a good source.
14	THE COURT: I don't know. Are we
15	concerned with the success of the tenants or even
16	with the success of the Center?
17	MR. KALL: Yes, your Honor. We are
18	concerned with that.
19	THE COURT: All right.
20	BY MR. KALL:
21	Q Mr. Bersani, at this time you stated that you had the
22	Primex office building in the planning stage. Why was
23	it important to you that the Car Center be successful?
24	A It is very simple. Sixty Trust gave me a permanent
25	and a building loan combined on the Car Center, either

a million six or a million eight, a million eight, which was a substantial amount of money good enough to do all the remodeling in addition to the Car Center. The leasing program went well and it looked like we had a good thing there.

In the meantime based on that, and on plans that I had for the office building and on prospects for leasing that office building, Sixty Trust, and I dealt primarily with a fellow by the name of Roy Littlehead, and he gave me a commitment of one million eight hundred thousand dollars, and with that commitment I went to Boston and that the building loan we actually closed the building loan and drew \$945,000.00 as a first payment.

Q When you say "we"?

I am talking about Primex Equities Corporation, I was the one running around doing this. If the Car Center failed or if we had undue trouble there, it would have upset the financing of the office building. As it turned out, things happened that I didn't expect. In other words, they underwrote Mutual of New York, Mony Plaza, and they withdrew my commitment, which influenced the figure of Sixty Trust, because they feared the competition from Mony Plaza, and it is at this time that the Car Center is having a lot of problems.

I am going to New York and Boston, having meetings
with the bankers, trying to button up tenants and so on.
I also did a good deal on the Westchester Flaze Shopping Center, and I was spending a lot of time in New
Rochelle on that, and as I say I got shut down anyway,
but not because of the car center. I kept it afloat,
and that is where Mr. Connors, who was with the Internal
Revenue and is retired now, got the impression that I
was operating the car center. I was not operating it.
I was the landlord, but I made the mistake of bailing
out various tenants, and I paid their withholding --this is Auto Dynamics -- I paid their withholding ---

MR. GROSSMAN: I am going to object. I think we are far sfield from the question.

THE WITNESS: All I am trying to do is tell the story. This is what happened. This is what was going on here, and we are talking about seventeen or eighteen thousand dollars.

MR. GMOSSMAN: I am going to object and move to strike cut the answer where he says it was an impression gotten by Mr. Compors.

THE COURT: That may be stricken. And as a legally trained person, Mr. Bersani, you know when an objection is made you should refrain from answering and give me an opportunity

		24
ı		to rule.
2		THE WITNESS: Your Honor, I will try.
3		THE COURT: You will do more than try.
4		You will do it.
5		THE WITNESS: Yes sir. I will.
6	BY MR.	KALL:
7	8 N	Now Mr. Bersani, did you at any time operate any
8		usiness in the shopping Car Center?
9	A N	o I did not.
10	Q D	id you at any time own any stock in any corporation
11		the Car Center?
12	A N	o I did not.
13	Q A	t any time were you an officer or director or employee
14	0:	f any business in the Car Center?
15	A N	o sir.
16	Q D	id you render assistance to any tenant in the
17	8	hopping center?
18	AI	did, %« * .
19	Q W	hat specific tenants?
20	A T	hat is Auto Dynamics. I helped them financially.
21	Q W	as there any other tenant that you helped financially?
22	A W	ell I remember I loaned money to Mr. Kerr.
23	QI	am sorry, I can't hear you.
24		think I loaned money to Mr. Kerr who had a manu-
05	f	acturing shop in the Car Center. But mostly it was

1		Auto Dynamics.
2	8	I see. And did you have any idea how much money you
3		loaned to this Corporation?
4	A	I don't know. It was quite a lot, but I don't know
5	•	exactly.
6	Q	And in what form did these loans take?
7	A	Well, I know I gave them money for their withholding,
8		twice I think.
9	Q	Was Primex receiving any rent at that time?
10	A	From this particular?
11	Q	From Auto Dynamics.
12	A	I am not sure whether they paid or not. At this time
13	1	I am not sure. This was handled by Mr. Ackerley and
14		Mr. Zolo and Mr. Connors. I am not sure.
15	Q	Have you had any control over the deposits of Auto
16		Dynamics?
17 ,	Α -	No. No sir.
18	Q	Could you sign any checks on the bank account of Auto
19		Dynamics?
20	A	No sir.
21	Q	Did you at any time have the authority to advise Auto
22 .		Dynamics as to the operations of their business?
23	A	My only interference, if you want to call it that,
24		will be with Mr. Slepan. I would talk to Ron Slepan
25		about the overall situation there. I would make

.

	1	
1		suggestions to him and I remember I got from New York
2		City showing car repairs that I thought he could use,
3		and as far as operating, ro. I didn't know anything
4		about the business.
5	Q	Did you ever tell them which bills to pay and which
6		bills not to pay?
7	A	Never.
8	Q	Did you ever have any authority or control over the
9		Corporation's financial affairs?
10	A	What was that again?
11	Q.	Did you ever have any authority or control over the
12		financial affairs of the Company?
13	A	No I didn't.
14	Q	Do you know who did?
15	A	There were several people there. Mr. Tambs, Mr. Hilde-
16		brand and Mr. Slepan. They plan the thing.
17	Q	Did you hire Mr. Hildebrand?
18	A	Yes, I recommended that hebe hired and he was hired.
19		I felt they needed some good people there to see what
20		was going on. I didn't feel Mr. Tambs was doing a
21		good job. I got all this from Tom Connors. He was
22		going to close the place up. As a result, I had them
23		hire Mr. Hildebrand who I thought would help out.
24	Q	Was Mr. Hildebrand ever nn Primex's payroll?
25	A	I don't believe so.
CONTRACTOR OF STREET	The second section of the second section is a second section of the second section of the second section is a second section of the section of the second section of the section of th	

1	ୡ	Was he ever on Bersani Construction Company's payroll?
2	A	No.
3	l Q	To your knowledge, was he always an employee of Auto
4		Dynamics?
5	A	I couldn't swear to it, that he was an employee
6		he must have been, but as far as the payroll was
7		concerned; I couldn't say. I assume he was.
8	વ	Do you recall when Mr. Slepan left?
9 .	A	I couldn't pinpoint the time. I don't know.
10	Q	Did you fire him?
11.	A	No, I wasn't in control then. I was fired from Primex
12		Equities Corporation. They removed me as President.
13		THE COURT: Now are you talking about
14		Primex Equities Corporation?
15		THE WITNESS: Yes sir.
16	BY N	R. KALL:
17	Q	One moment Mr. Bersani. Do you recall the approximate
18		time when you were relieved of your duties with Primex
19		Equities Corporation?
20	A	I think it was the latter part of '63.
21	ନ	All right. Could you state a little bit about why
22		you were relieved of your duties? Wasn't it due
23	A	They were not happy with me.
24	વ	Wasn't it a fact, Mr. Bersani, that right about that
25		time literally the roof started caving in?

1 MR. GROSSMAN: I am going to object to that your Honor. 2 3 THE COURT: Sustained. BY MR. KALL: 4 What was the financial position of Primex Equities 5 Corporation and/or some of the other entities in which 6 you were involved at that time? 7 Everything went bad, Mr. Kall. Everything. With the 8 A shopping center in Westenester; they pulled the 10 commitment on the Primex building. The Car Center 11 went bad. Some of the property that we bought out West, the Walworth Stores didn't have tax clauses and 12 13 the taxes went sky high. We made a mistake there. That is what happens. Everything went bad at that time 14 There was nothing I could do. 15 16 Mr. Bersani, did you ever as an individual receive any remuneration in the way of salary, dividends, commis-17 sions from Auto Dynamics? 18 No. 19 Q Did you sign any checks? 20 21 1. Never signed a check. 22 Could you have signed any checks? Q A 23 No. Q Did you ever see the payroll records? 24

Never.

1	વ	Did you pay bills for Auto Dynamics other than any
2		payroll taxes?
3	A	The only thing I paid was withholding, once or twice
4		in substantial amounts to Tom Connors to keep the thing
5		afloat.
6	Q	Did you advance money to the Corporation at other times
7		for other purposes?
8	A	I advanced money, yes.
9	Q	Did you tell them for what purpose the money was to be
10		used?
11	A	I didn't tell them. They would tell me what the money
12		was needed for and I would give it to them.
13	વ	Were you involved in any decision-making as to the
14	-	operations of the Auto Dynamics Corporation?
15	Α .	Only as I told you, I would make suggestions to run
16		Slepan, on the overall thing, trying to get him to
17		help him to keep that Center going, I tried to to
18		give you an example, I tried to get Onondaga Supply to
19		take supplies there so we would have a better arrange-
20	4	ment for parts for these various entities and I
21	The second	succeeded to some extent, but never did he actually
22		move into the Center.
23	Q	Was there any attempt by you at any time to have Auto
24		Dynamics not pay the withholding?
25	A	Give me that again. Did I what? I am sorry.

1	Í	MR. KALL: Will you repeat my question?
2		(The Court Reporter repeated the
3		question as above recorded.)
4		THE WITNESS: No sir.
5	BY 1	MR. KALL:
6	Q	Do you know when Auto Dynamics went out of business?
7	A	I couldn't pinpoint it, no.
8	Q	Did Auto Dynamics also file a petition in bankruptcy?
9 .	A	I don't know what they did, whether they filed a
10	~	voluntary or what. I don't know. I had too many
11		problems to know. At that it I didn't know what
12		happened.
13	Q	Were you aware of any debts that Auto Dynamics had at
14		that time?
15	A	No, I didn't know then and I don't now. I don't know
16		what the situation was.
17		MR. KALL: I have no further questions.
18		CROSS EXAMINATION
19	BY N	MR. GROSSMAN:
20	Q	Now sir, did you indicate that you concede of the
		idea of the Car Center before or after Mr. Slepan
21		joined your organization?
22		
23	A	The Car Center idea was before Mr. Slepan came to the
24		Car Center, that's right.
25	. &	And what was his car ity when he came to you, sir?

科

1	A	When I first met Mr. Slepan, as I said, I believe he
2		was selling dynamometers.
3	Q	He was a salesman?
4	A	Yes.
.5	Q	And you hired him, sir?
6	A	I hired him, yes.
7	Ø,	For which entity did you Mr. Slepan?
8	A	Well I hired him to be in charge of the entire Car
9		Center.
10	'Q	In charge of the entire Car Center?
11	. A	That's right.
12	ୡ	Did you have a contract with Mr. Slepan, sir?
13	A	I don't know if it was a written contract, but we
14		had an agreement. Yes. We had an understanding.
15	Q	You don't recall that you had a written contract with
16		Mr. Slepan?
17	A	We might have, but I don't recall.
18	Q	Do you recall that you had a three-year written
19		contract with Mr. Slepan?
20	A	That sounds right. I had a definite deal with him.
21	Q	And this three year contract was with which entity, sir
22	A	I believe it was Bersani Realty and Construction, but
23		I am not positive.
24	Q	And that contract was entered into before Auto Dynamics
25		is that correct, sir?

1 That is correct, yes sir. A And that contract was for \$20,000 a year for three 2 0 years, isn't that correct? 3 \$20,000 a year, right. A Now, sir, when Mr. Slepan moved to Auto Dynamics, did 5 Q you ever do anything with that contract, sir? A I don't recall, I don't know. 8 Q Now, sir, at the time Mr. Slepan joined your organization was Auto Dynamics already organized, sir? 9 10 A Probably not. 11 0 It was organized after Mr. Slepan got there; is that right? 12 I would think so, yes. 13 A And who owned the stock of Auto Dynamics, sir? 14 Q 15 A Well, I think we covered The stock -- the Corporation was formed by Mr. Kall and the stock was to be issued 16 to Low and myself and within a week before he actually 17 did it, I had him stop, because on advice of counsel 18 it was not the way to do it. It was not proper so we 19 didn't do it. Now I think Mr. Slepan was already in 20 my employ. I don't know at what point he went from the 21 Bersani Realty payroll to Auto Dynamics. You know, 22 I can only tell what I remember. At some point, he 23 must have gone from that entity to this, to Auto 24

Dynamics.

1	Q Now, sir, could you answer the question?
2	THE COURT: Excuse me. Did Auto
3	Dynamics in its beginning, was it sufficiently
4	financed to pay a salary of \$20,000 a year?
5	THE WITNESS: At the very beginning?
6	THE COURT: yes.
7	THE WITNESS: I don't believe so, no.
8	No.
9	BY MR. GROSSMAN:
10	Q Well, sir, will you answer the question as to who owned
11	the stock of Auto Dynamics?
12	A Mr. Grossman I don't know. I turned it over, when I
13	found out, I was not
14	THE COURT: No, just answer the
15	question.
16	THE WITNESS: I can only answer it one
17	way.
18	BY MR. GROSSMAN:
19	Q Isn't it a fact that Auto Dynamics was owned one-half
20	by wife and one-half by Mr. Low's wife?
21	A It was never consummated.
22	Q Are you saying the stock was not issued?
23	A It was not issued to Mrs. Bersani or Mr. Low. Before
24	Sheldon could, under advice, I stopped him.
25	THE COURT: Was that the initial

\$7**9**14

1	instructions, to issue it to Mrs. Bersani and
2	Mrs. Low?
3	THE WITNESS: Yes, because I felt that
4	this was the key to the Center, and I didn't have
5	a tenant that I could trust to operate it. As it
6	turned out we didn't do so well operating it.
7	BY MR. GROSSMAN:
. 8	Q Now sir, do you recall I took your deposition in this
9	case on July 9, 1970?
10	A Yes sir.
11	Q Now, sir, I am going to read from page 32 of that
12	deposition, sir.
	TUP COUPE. To that 642 a49
13	THE COURT: Is that filed?
14	MR. GROSSMAN: I believe it was, your
15	Honor.
: 16	THE COURT: Yes it is. Page what?
17	MR. GROSSMAN: 32. And I am going to
18	read line 19, the question that I asked you at
19	that time.
20	Q "And who owned the stock at this time that
21	you decided to follow your attorney's advice
22	with regard to that organization?
23	A Repeat the question. The point of time is
24	what I don't know."
25	Q Then the question was repeated and your

		(Bersani - Cross)
1		answer on the top of page 33:
2		"A It was Broncey Bersani and Lana Low."
3	Q	And then the next question:
4		"A I see; did they each own 50% of the stock?
5		A Yes.
6		Q And now, sir, was their stock ownership
.7		at this time subject to any restrictions
8		that you can recall?
9		A No."
10	Q	Now, sir, do you recall I asked you those questions
11		and that you gave those answers?
12	A	Absolutely.
13	Q	Now, sir, were those enswers correct at the time you
14		gave them?
15	A	It is no different than what I said here this morning.
16	Q	I see. The stock was then issued to your wife and
17		Mr. Low's wife; is that correct?
18	A	As far as Sheldon Kall went with it. You know, I am
19		not looking over his shoulder to see whether it was
20		or not. I don't know what the mechanics were. I don't
21		remember. I never practised law, and that is the only
22		thing and the idea was not to try to be my own lawyer.
23		Mr. Kall handled it. What I told you this morning
24		was with a week from the formation of this corporation.
25		We got out of it on the advice of counsel.

1 MR. GROSSMAN: I am going to move to strike. 2 THE WITNESS: You were trying to trick 3 me on the point of time. THE COURT: I think we will proceed 5 much faster and the record will/much clearer 6 to the Court if you answer counsel's questions. 7 If they are tricky, as you indicate, you have 8 counsel and he will make known his objections and the Court will rule on them and we will move 10 11 along. I am not interested in smything but the 12 answer and if you don't know the answer, say you don't know. It is as simple as that, Mr. Bersani. MR. GROSSMAN: 14 Q Now, sir, do you know if the stock was ever transferred 15 from your wife and Mrs. Low to anyone else? 16 17 You will have to ask Mr. Kall, because I don't know what he did. I did not follow it up. 18 Q The answer is that you don't know if the stock was 19 ever transferred. 20 A I don't know how it was handled. I can't say, because 21 I didn't do it and I don't know. I don't know. 22 Now, sir, who owned the assets of Auto Dynamics? ·Q 23 Who owned the assets? I don't know. The equipment, 24 as I said before, was owned by Primex Equities. 25

1	R	All of the equipment was owned by Primex?
2	A	Yes. Yes sir.
3	Q	Now, sir, do you recall any written agreement with
4		Mr. Slepan concerning any stock?
5	A	I don't know.
6	Q	Do you know of any written agreement with anyone else
7		concerning the transfer of the stock to them?
8	A	This was left up to Mr. Kall and Mr. Carl Gui got into
9		it. I didn't get into it.
10		THE COURT: Well, did you ever issue
11		any intructions to anyone after the initial
12		instructions to issue the stock to Mrs. Low and
13		to Mrs. Bersani?
14		THE WITNESS: I told Mr. Bob Nichol,
15		who was like my chief assistant at that time, I
16		told Bob the problem and I told him to take care
17		of it.
18		THE COURT: But you never communicated
19		with Mr. Kall directly?
20		THE WITNESS: I certainly did. I called
21		Mr. Kall and I alerted him on the advice I got
22		from counsel. This was within a week from the tir
23		he formed the Corporation.
24		THE COURT: Then you had nothing further
25		to do with it. You left it with one of your

assistants.

THE WITNESS: I told Mr. Nichol about the problem. He brought in Mr. Carl Guy, and I never paid any attention to it, If he made a million on it one year. I just wanted no part of it. I am trying to put in an \$8 million office building and a \$22 million Westchester shopping center. What did I care about that thing? The reason I am not a lawyer, I got counsel. The are trying to slap me with something I had nothing to do with.

THE COURT: Whether you did or not will be a matter of fact and law.

you, your Honor. This is the ---

MR. KALL: Mr. Bersani, ---

THE COURT: I am going to have to stop you making ---

MR. KALL: Mr. Bersani, listen to the Judge quietly.

THE COURT: Mr. Bersani, I am going to have to direct you to answer questions and to stop making speeches. That is a direction.

BY MR. GROSSMAN:

Now isn't it a fact that the only time that the

1	Corporation papers were turned over to Mr. Guy was
2	when you were attempting to set up another Corporation
3	in which you would be a substantial shareholder?
4	A I can't answer that question. I don't know what you
5	are talking about.
6	THE COURT: Just say that you can't
7	answer, that you don't understand.
8	BY MR. GROSSMAN:
9	Q Do you ever recall approaching Mr. Guy with the idea
10	of forming a new corporation which would include Auto
11	Dynamics and would also have yourself and a Mr. Newcome
12	as heads of that corporation, substantial shareholders?
13	A No sir. Mr. Newcomet well I am sorry, I can explain
14	it but you won't let me.
15	THE COURT: You will have an opportunity
16	Your counsel will give you an opportunity.
17	THE WITNESS: This Newcomet rings a
18	bell. But he was not involved in this. He was
19	a tenant.
20	BY MR. GROSSMAN:
21	Q All right, sir, when you hired Mr. Tamby by the
22	way, Mr. Tamby was hired did you say two or three
23	years before Auto Dynamics?
24	A Mr. Tamby worked in my office and he was not neces-
25	sarily hired. I sent him over there.
	U.S. COURT REPORTERS

1	Q	Did you advise anyone that you were going to send him
2		there?
3	A	I think I told Mr. Slepan I was going to send him
4		there because they needed some help in the accounting.
5	Q	You also hired Mr. Hildebrand; is that correct, sir?
6	A	I was instrumental in hiring him.
7	Q.	You met with him and hired him and sent him over there;
8		isn't that correct, sir? Did you tell him what salary
9		he would be getting there, sir?
10	A	Well, these things weren't done just arbitrarily. I
11		am sure I talked with Ron Slepan about it, and I
12		wouldn't presume that you set the salary without talking
13		to Mr. Slepan.
14	Q	Didn't you in fact hire Mr. Hildebrand without talking
15	•	to Mr. Slepan? Isn't that correct?
16	A	No. That is not correct. Youare saying it. I didn't
17		say it.
18	Q	What was Mr. Hildebrand hired for?
19	A	Again, it was my feeling and after talking with Mr.
20		Slepan that they should have better cost controls,
21		you see, they were not making a go at this Car Center,
22		and Mr. Hildebrand was apparently he had the
23		qualifications for that job.
24	Q	I see. Now you hired Mr. Hildebrand to make weekly
25		reports to you; isn't that correct?

1	A	No. No. I don't believe that is correct. I was
2		getting daily reports as much as possible, but I don't
3		know that Hildebrand prepared them.
4	Q	You were getting daily reports from Mr. Tamby?
5	A	Ron dropped them off, but who prepared them I don't
6		know. I was getting reports on each of the units
7		there, to see whether they were going up or down.
8		I was away a good part of the time and when I came back
9		I talked to Ron about them, but I don't know who
10		prepared them, whether it was Tamby or Mr. Hildebrand
11		or who. It could have been any one of them. But I
12		was getting daily sales reports.
13		THE COURT: Daily sales reports of
14		what?
15		THE WITNESS: On each of the segments.
16		THE COURT: Each tenant?
17		THE WITNESS: Yes.
18		THE COURT: Did your lease require
19		that?
20		THE WITNESS: No they didn't, your
21		Donor. My recollection is they were some per-
22		centage deals, but they incorporated them pretty
23		much into all of them. We never got one from the
24		body and fender people.
	1	

THE COURT: How many tenants did you have?

1	THE WITNESS: At one time, about 30.
2	THE COURT: And they all submitted
3	daily reports of net sales?
4	THE WITNESS: Somebody over there would
5	do it, Mr. Slepan who was here could probably
6	answer that. They did get me reports daily.
7	Some people would come in with five or six things
8	and they were going to have to go through this
9	procedure and that was, as I say, a process of
10	touch and go, but I got daily reports.
11	BY MR. GROSSMAN:
12	Q Your daily reports were primarily from Auto Dynamics
13	and the tire company?
14	A I don't recall. They were sales reports.
15	Q You also had a breakdown in each department, between
16	MCC tire department and Auto Dynamics; isn't that
17	right?
18	A I don't know how it was made up at this time.
19	Q Weren't MCC Tire Corporation and Auto Dynamics
20	different than the other corporations where tenants
21	in the Car Center and that you had your employees
22	running these two Corporations?
23	MR. KALL: I object to that, your
24	Honor.
25	THE COURT: He may answer.
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1	THE WITNESS: I did not can I answer
2	the question?
3	THE COURT: Yes.
4	THE WITNESS: I didn't have my employees
5	run the Corporation. I had one man there who
6	worked for me in my office and I recommended, I
7	sent out Mr. Hildebrand, but they were not my
8	employees. I did not pay them. I don't even
9	know what they got at this moment, if I knew
10	then.
11	BY MR. GROSSMAN:
12	Q Now, sir, you have admitted to at least two employees
13	who worked for you, Mr. Slepan and Mr. Thomas working
14	
14	in Auto Dynamics; isn't that correct, sir?
15	A Mr. Thomas and Mr. Slepan worked for Auto Dynamics,
16	yes sir.
17	Q Now, sir, were they also in MCC Tire Corporation?
18	A Mr. Slepan was in charge of the whole place. I don't
19	know. I can't answer that question.
20	Q Didn't you also have a Mr. McPherson in the MCC Tire
21	Corporation?
22	A Yes he did.
23	Q And you hired him for them?
24	A No, I didn't hire Mr. McPherson.
	Q Later when Mr. Slepan left Auto Dynamics, you put
25	The state of the s

1	Mr. McPherson as head of Auto Dynamics; is that correct
2	A No sir, I don't know that that is right.
3	Q Why don't you? Don't you recall whether that is right?
4	A I just don't think that I did.
5 /	THE COURT: Did Mr.McPherson succeed
6	Mr. Slepan, if you know.
7	THE WITNESS: I don't know, your Honor.
8	THE COURT: Did the Auto Dynamics pay
9	any rent?
10	THE WITNESS: I don't know, your Honor.
11	I imagine they did pay some rent, but I don't
12	know. I don't know.
13	THE COURT: Who would they pay it to?
14	THE WITNESS: Mr. Zolo would collect
15	it or Mr. Ackerley, who were in charge of that.
16	I am not sure. They must have paid some rent.
17	Mr. Zolo will be on the stand. He can answer
18	that.
19	BY MR. GROSSMAN:
20	Q Now, sir, when you advanced money to Auto Dynamics,
21	did you just give them arbitrary amounts during this
22	time or did you give them amounts for specific purposes
23	A The only specific thing that I can remember is the
24	withholding to Mr. Connors. I made many joans to
25	them in varying amounts, but I would give them a check

1	and that would be it. The only thing that I can be
2	specific s that withholding.
3	Q I see. Now Lan't it a fact that you also advanced
4	money to pay the payroll on a number of occasions?
5	A Yes, I probably did. I gave them money many times
6	for different purposes, but I don't know what they
7	were.
8	Q You did know that you were paying the payroll?
9	A Yes.
10	THE COURT: Whose money did you give
11	them? Primex?
12	THE WITNESS: No, your Honor, I didn't
13	make that mistake. I gave them my money. Bersani
14	Realty, which was wholly owned by me, all my
15	personal account.
16	BY MR. GROSSMAN:
17	Q And they were mostly Bersani Realty Corporation checks
18	that went over there?
19	A I would think so, yes, I think they were Bersani Realty.
20	Q And how often was the payroll due, every two weeks?
21	A I don't recall Mr. Grossman. I don't remember.
22	Q But they were sizable amounts?
23	A Yes.
24	Q There were other creditors of the Corporation who
25	were pressing creditors?

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1		
1	A	This I don't know. Mr. Grossman, I don't know.
2		The only thing I know was that the thing that was about
3		the shutting the place down, was the withholding. As
4		far as the other pressing bills, I don't know. Payroll
5		and withholding, those were the two things that they
6		mostly bothered me about, which I assisted them to get
7		money, and I used my own money.
8	Q	You don't recall other creditors, but you do remember
9		that there were other pressing creditors?
10	A	Mr. Grossman, I don't know. I don't know that there
11		were other pressing creditors.
12	Q	You never knew that?
13	A	I didn't get into that. You are trying to have me
14		say something that I didn't know.
15	Q	Didn't you have a list which was referred to as the
16		hot sheet in which the real pressing creditors were
17		listed on that?
18	A	I don't recall any hot sheet.
19	Q	You don't recall that?
20	A	No.
21	Q	Now, sir, when you advanced the money for the payrolls.
22		were you aware of the fact that the Corporation was
23	-2	delinquent in paying withholding taxes?
24	A	Mr. Grossman, I did because I had to pay some of the
25		withholding so I knew that they were not paying right

1		there, yes.
2	ର :	Now, sir, did you represent to the persons who were
3		the officers of Auto Dynamics when you moved them over
4		to Auto Dynamics that there would be a substantial
5		amount of financing that you would supply that
6		Corporation?
7.	A	I didn't expect to have to finance them, no.
8	Q	You didn't expect to finance them?
9	A	They went in there with the equipment and everything
10		furnished to them, but I didn't expect to, no.
11	Q	Now, sir, you did discuss wages of people in Auto
12		Dynamics with the officers of Auto Dynamics; isn't
13		that correct?
14	A	I did in terms of maybe Mr. Hildebrand, but never with
15		the mechanics or people that they hired, no.
16		MR. GROSSMAN: Would you repeat the
17		answer.
18		(The Court Reporter repeated the
19		answer as above recorded.)
20	BY MR	. GROSSMAN:
21	Q	Just Mr. Hildebrand?
22	A	I never got into hiring or firing anybody over there
23		what they paid them. I would not get into that. I
24		didn't know then and I don't know now.
25	Q	Did you get into the hours in which the business would

1		be opened? Did you discuss that with the officers?
2	A	We had a plan where everybody opened and closed at a
3		certain time so every department for tenants that was
4		in the shopping center.
5	Q	Including Auto Dynamics?
6	A	Yes.
7.	Q	You also discussed prices that Auto Dynamics would
8		charge?
9	A	Except for the dynamometer service. There was always
10		a question many times whether to have a high price or
11		low price, which would be better for the Car Center,
12		but not the prices for repairs or anything like that.
13		Because I didn't know anything about it.
14		THE COURT: What services did this
15		Auto Dynamics render other than the dynamometer
16		service?
17		THE WITNESS: Well, it had a complete
18		diagnostic thing, it was for wheels and things
19		like that.
20		THE COURT: But it did render no ser-
21		vice other than that?
22		THE WITNESS: No, just the diagnostic
23		thing. And from there you went to Jack's place
24		to get your car fixed. They even did business
25		with like somebody buying a used car, they would

1	bring it there to see whether they were getting
2	a good deal.
3.	BY MR. GROSSMAN:
4	Q Did you indicate in direct examination that Auto
5	Dynamics was undercapitalized when it was started?
6	A T don't know. As I pointed out, they walked into
7	the business that was all equipped and ready to go.
8	There was no investment needed.
9	THE COURT: That would have been the
10	same time when Mr. Low operated it?
11	THE WITNESS: It would have, yes,
12	
13	because the Corporation furnished it.  THE COURT: The dynamometers?
14	THE WITNESS: Yes. And it was all done
15	according to Hoyle. There was no secret about it.
16	BY MR. GROSSMAN:
17	Q Now, sir, you said you plead withholding taxes for
18	two quarters for that Corporation?
19	A I didn't say that Mr. Grossman. I didn't say two
20	quarters. I said several times. I don't know whether
21	. 1t was one quarter or two quarters.
22	Q Certainly not for the quarters that we are involved
23	here in suit?
24	A Gee, I hope not.
25	Q You paid for at least a quarter before that; is that

1		correct?	
2	A	Mr. Grossman, it could have been one quarter, two	
3		quarters or three quarters. I tust don't know.	
4	Q	How did you pay this, sir?	
5	A	Well again, I think Mr. Connors probably could answer	
6		it better. I peid it. What the mechanics were, I	
7		don't know. If it was done properly I should	
8		have made a loan to Auto Dynamics and they paid it.	
9		How it was done mechanically, I don't remember.	
10	Q	Did Mr. Connors come to see you about it?	
11	A	Mr. Connors came to see about that and a lot of other	
12		corporations.	
13	Q	And you paid Mr. Cormors the money; is that correct?	
14	A	Mr. Grossman, I don't know the mechanics. I did pay	
15		him, but how it was done or accomplished, I don't	
16		remember. I mey have given you see, Mr. Connors	
17		will know I may have given him my check. I may	
18		have given it to Auto Dynamics and they I don't	
19		remember. The proper way would be to give it to	
20		Auto Dynamics. I may have done it that way, but I	
21		don't know.	
22	Q	After Mr. Hildebrard was hired you did may he made	
23		reports to you; is that correct, sir?	
24	A	I didn't say that. I got reports, but I don't know the	st
25		Hildebrend brought them over. I think Mr. Slepen brought	ght

1		them over.
2	Q	But these were sales reports, and these were prepared
3		by Mr. Hildebrand; is that so?
4	A	I don't know. They may have or may nothave.
5	Q	About how long did you receive these reports after
6		Mr. Hildebrand was employed by Auto Dynamics?
7	A	I don't know.
8	Q	Now, sir, did you relieve Mr. Hildebrand of his
9		duties?
10	A	Did I personally relieve him of his duties?
11	Q	Yes.
12	A	I don't believe so, no.
13	Q	You don't believe so?
14	A	No.
15	Q	You don't recall that you met him and you suggested
16		that he leave Auto Dynamics?
17	A	Anything like that would be cleared with Mr. Slepan.
18		He was in charge of the place. These were mechanics
19		and these were things that were done by them. It was
20		not my decision.
21	8	Wasn't Mr. Hildebrand asked to leave after Mr. Slepan
22		was off the payroll of Auto Dynamics?
23	A	I don't know.
24	व	You don't know?
25	A	It could be, but I don't know Mr. Grossman.

1	Q	Well, sir, do you recall that Mr. Slepan left in about
2		April of 1964 and that Mr. Hildebrand left in about
3		May or June of 1964?
4	A	I don't recall. It sounds right. It could be. But I
5		don't know that is
6		MR. GROSSMAN: Your Honor, I would like
7		a few moments to review my notes.
8		THE COURT: All right.
9	BY I	MR. GROSSMAN:
10	Q	Now, sir, do you recall that in addition to discussing
11		operations with Mr. Slepan you also discussed finances
12		with Mr. Tambs; do you recall?
13	A	I don't know what you mean by finances, Mr. Grossman.
14	Q	Well, do you recall that you discussed withholding
15		taxes with Mr. Tambs?
16	A :	I don't recall any specific conversations, no.
17	Q	Well, I am going to read from page 52 of that deposition
18		sir, the question on line 1:
19		Q "Now who in Auto Dynamics did you discuss
20		the delinquent withholding taxes with?
21		A I think it was usually Aub Tambs that would
22		come telling me what his problems were."
23	Q	Do you recall giving that answer, sir, to that
24		question, in that deposition?
25	A	This is an accurate answer.

	II .	
1	Q	That is an accurate answer?
2	A	Yes.
3	Q	Now, I am going to read from page 89 of this
4		deposition and the question on line 13 is:
5		Q "Is it not true that insofar as your advice
6		was sought with regard to financial matters
7		and payments and loans, that those discus-
8		sions were with Aubrey Tambs?
9		A Financial matters I talked to Aubrey, yes."
10	Q	Is that correct?
11	A	That is correct, but it is not specific. You asked
12		me about a specific conversation which I don't recall.
13		But that answer is correct, yes.
14	8	Now, sir, you mentioned in answer to your counsel's
15		question that you never advised against paying with-
16		holding taxes; is that correct, sir?
17	A	No sir, I did not advise not to pay withholding taxes.
18	Q	Did you advise in favor of withholding taxes or did
19		you just offer no advice?
20	A	I didn't advise either way. I didn't advise either way
21	Q	Now, sir, do you recall in December of 1963 the
22		offices of Auto Dynamics secured a bank loan in the
23		amount of \$20,000; do you recall that?
24	A	I remember something about a bank loan. I don't have
25		any personal knowledge of it. I had no part in it,

	11	
1		Mr. Grossman.
2	Q	You had no part in securing the loan?
3	A	That's right.
4	Q	But you did have a part in receiving some of the
5		proceeds of that loan; isn't that so?
6	A	They may have repaid me some money, but I don't
7	Q	A substantial part of the \$20,000; isn't that correct?
8	A .	Mr. Grossman, you know I don't remember exactly.
. 9	Q	Do you recall what the loan was secured for? The
10		purpose?
11	A	I don't know.
12	Q	Did you discuss that loan with somebody in Auto
13		Dynamics? Did you discuss it with Mr. Tambs?
14	A	I don't remember discussing it with anyone.
15	Q	Wasn't Mr. Tambs the one who advanced you the portion
16		of those proceeds?
17	A	He returned part of the money I advanced. Is that
18		what you are saying?
19	<b>A</b>	Out of the proceeds of that loan. That was Mr. Tambs;
20		is that correct?
21	A	I would presume so.
22	Q	Now, sir, do you have a better recollection of when
23		you left Auto Dynamics than when you responded to your
24		counsel's questions, sir. Do you know the time that
25	you	left, that is Primex Equities?
A SECURITION OF STREET SALES		

1	A	Primex Equities, it was in the fall.
2	Q	It was in the fall of '64; isn't that so?
3	A	I don't know for sure.
4	Q	It was certainly after the withholding quarters that
5		involved here; isn't that correct, sir?
6	A	It was the fall of '64 when I left, so that is your
7		answer.
8		MR. GROSSMAN: Okay, I have no further
9		questions at this time. I may want to call
10		Mr. Bersani as an adverse witness in the
11		Government's case.
12		THE COURT: Any re-direct?
13		REDIRECT EXAMINATION
14	BY N	R. KALL:
15	Q	Mr. Bersani, was your demise from authority in the
16		Primex Equities in the fall of '63 or '64?
17	A	Mr. Kall, I don't know. You know those dates. Lead
18		me. I don't know for sure:
19	Q	But it could have been '63 or '64; is that correct?
20	A	It could be either one. I don't know. I should know
21		probably, but I don't.
22	Q	What was the cost of the dynamometer ?
23	A	Oh somewhere in the neighborhood of ten or eleven
24		thousand dollars.
25	Q.	Was this paid for by

		2
1	A (Interrupting) Primex Equities, yes.	
2	THE COURT: But you and Mr. Low	
3	personally were going to control the company,	
.4	initially?	
5	THE WITNESS: Initially, and then we	
5	found out we couldn't, yes.	
	BY MR. KALL:	
	Q When you were discussing financial matters in answer	
	to the question on page 89, when you said you had	5
	discussions with Aubrey Tambs, did you have discus-	
	sions with anyone else besides Aubrey Tambs?	
	A On what?	
	Q Did you discuss financial matters of the Corporation	
	with other than Aubrey Tambs? Did you discuss any	
	with Mr. Slepan?	
	A I discussed the overall operation on everything with	
	Mr. Slepan. I don't recall specific discussions on	À
	finances.	
	Q Mr. Grossman referred to a \$20,000 loan that Auto	
	Dynamics allegedly received. Do you know for sure	
	whether that money was received?	
	A I don't know. I don't know, no. I think they got it,	
	but I am not sure.	
	THE COURT: You know that was from some	
	source, you were repaid some moneys.	
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1	THE WITNESS: That is correct, your
2	Honor, but I don't
3	BY MR. KALL:
4	Q Do you recall when you were repaid?
5	A No, I don't know the date.
6	Q Do you recall for what you were repaid?
7	A I am not sure, Mr. Kall.
8	Q Wasn't it a fact, Mr. Bersani, that the success or
9	failure of the Car Center may have been directly
10	affected by the success or failure of the dynamometer
11	operation?
12	A Well, we all felt that it was the key.
13	MR. GROSSMAN: Objection, your Honor.
14	That is a leading question.
15	THE COURT: I will let him answer.
16	You may answer.
17	THE WITNESS: I felt it was a key to
18	the entire operation. I am not so sure that it
- 19	was, but we felt it was.
20	BY MR. KALL:
21	Q Now lets assume that the dynamometer I brought
22	my car in and the dynamometer said I needed a new
23	muffler. Did you have a tenant that installed mufflers
24	A Yes we did.
25	Q Now who would I pay? Would I pay the muffler tenant

1		or pay the central bookkeeping system?
2	A.	Originally we had a central filing system. That
3		didn't work. And then I think what they did was have
4		him pay it to the fellow who installed it. In other
5		words, if you had a muffler and maybe some body work.
6	100 To	you would pay the muffler people and pay the body prople
7		But originally we wanted to collect the bills and have
8		central billing, and then collect and disburse.
9.	e.	Disburse to the tenants; is that correct?
10	A	Yes. But it was too cumbersome.
11	Q	By necessity all of the billings for the entire Center
12	*** }	would be at one point, wouldn't you have access to
13		those sales records of all those tenants at that time?
14	Α -	Yes. Sure.
15	Q	Was there also a tenant in the shopping center called
16		Midtown Car Center Credit Corporation?
17	A	Yes there was.
18	Q	What was the purpose of that tenant?
19	4.	MR. GROSSMAN: Your Honor, I am going
20		to object. I think this goes far beyond cross
21		examination.
22		THE COURT: I think it does, but I will
23	11	let him answer.
24	A	That was another segment of the Center, and I don't
25	人。此位	know exactly what they did do, whether they provided

1	credit for those various things or not, I don't know.
2	Q But you had no control of that?
3	A No.
4	MR. KALL: I have no further questions
5	at this time.
6	MR. GROSSMAN: No further questions.
7	THE WITNESS: May I step down?
8	THE COURT: Yes, you may step down.
9	(Witness excused.)
10	THE COURT: I think this is a good
11	time probably to recess. You gentlemen feel that
12	you can conclude the proof today? I am not
13	pressuring you. But we will recess until 1:30.
14	MR. Kall: All right.
15	MR. GROSSMAN: 1:30. Okay.
16	MR. KALL: Thank you, your Honor.
17	THE CLERK: Court stands in recess
18	until 1:30.
19	(Whereupon at 12:04 p.m. o'clock a
20	Lunch and recess was taken to 1:30 p.m. o'clock.)
21	
22	
23	
24	
25	

1	AFTERNOON SESSION
2	APPEARANCES:
3	SHELDON G. KALL, ESQ.,
4	Attorney and Counsellor at Law,
5	3522 James Street,
6	Syracuse, New York 13206,
7	Appearing in behalf of the Plaintiff;
8	-and-
9	HONORABLE JAMES M. SULLIVAN, JR.,
10	United States Attorney for the
11	Northern District of New York,
12	Federal Building,
13	Syracuse, New York,
14	By: HERBERT GROSSMAN, ESQ., Trial Attorney,
15	Tax Division, Department of Justice,
16	Washington, D. C.
17	
18	THE COURT: All right.
19	MR. KAIL: I call to the stand Mr.
20	Anthony Zollo.
21	ANTHONY J. ZOLLO, called as a witness
22	in behalf of the Plaintiff, being first duly
23	sworn, was examined and testified as follows.

BY MR. KALL:

24

25

DIRECT EXAMINATION

1	Q	Would you state your full name and address.
2	A	Anthony Joseph Zollo, 410 Gaynor Avenue, Syracuse.
3	Q	And your present occupation is?
4	'A	Proprietor-manager for Investors Funding New York.
5	Q	Did there come a time when you became associated
6		with Mr. Bersani?
7	A	Yes.
8	Q	In what year and in what capacity?
9	A	I believe it was April of '62 I think. It could have
10		been '61, but I am not sure. But April of '64 I
.11		became associated with Anthony Bersani.
12	Q	In what capacity?
13	A	His leasing and helping with the property management.
14	Q	Were you on the payroll of any specific entity?
15	A	I believe it was the Bersani Realty and Construction
16		payroll.
17	ୡ	Were you ever on the payroll of Primex Equities Corp-
18		oration?
19	A	I think later it was, yes.
20	Q	Were you in charge of securing tenants for any
21		particular properties?
22	A	Yes. Well, not any particular, all the properties.
23		I should not say all the properties, the properties
24		including Syracuse and the immediate surrounding area,
25		yes.

1	Q.	Did your duties include anything to do with the Car
2		Center?
3	A	Yes.
4	Q	And what were your duties there?
5	A	To help with the management of the property and also
6		the leasing of the property.
7		MR. GROSSMAN: I am sorry I didn't hear
8		THE COURT: Will you keep your voice
9		up. The accoustics here are very poor in this
10		courtroom.
11		THE WITNESS: Okay.
12		(The Court Reporter repeated the
13		answer as above recorded.)
14	BY ME	R. KALL:
15	Q	Did there come a time when you leased or entered into
16		a lease with Auto Dynamics as tenant and Primex
17		Equities as landlord?
18	A	Yes.
19	Q	Do you recall the date of that lease?
20	A	No.
21	Q	Do you recall who signed the lease on behalf of Auto
22		Dynamics?
23	A	To my best recollection?
24	Q	To your best recollection.
25	A	I don't have a copy, but to my best recollection it

1		was Mr. Slepan.
2	Q	Ronald Slepan?
3	A	Yes, to the best of my recollection.
4	Q	Do you recall who signed it on behalf of Primex
5.		Equities Corporation?
6	A	Mr. Bersani.
7	Q	Do you recall any terms and conditions of the lease?
8	A	No. Just in general. We had some things, but they
9		would be general leases.
10	Q	Do you recall whether they were on a percentage
11		lease?
12	A	I don't remember.
13	ବ	Was it customary in the Car Center and other shopping
14		centers to have percentage leases?
15	A	Yes. Excuse me. There were other leases, if I may
16		put it this way, there were other leases that I remem-
17	-	ber were on a percentage basis. Now whether these
18		particular leases was or was not, I can't remember.
19	Q	Were these leases that you are referring to leases
20		of the tenants in the Car Center?
21	A	Yes.
22	8	Who was the overall manager of the Car Center?
23	A	Mr. Slepan.
24	વ	When I say the Car Center, I refer not just to Auto
25		Dynamics but to the entire Center.

1	A	He was overseeing the whole Center, yes.
2	Q	What did Auto Dynamics do?
3	A	In respect to what?
4		MR. GROSSMAN: I am sorry but I can't
7		hear. Will you repeat the question and the
0		answer.
7		(The Court Reporter repeated the
8		question and the answer as above recorded.)
9	Q	What were its functions?
10	A	Well, the functions I believe of Auto Dynamics was
11		mainly all basically the dynamometer operation, which
12		would give a diagnostic report on an individual car
13		and they were the operators, I believe, of this
14		particular machine.
15		MR. GROSSMAN: Would you repeat the
16		answer.
17		(The Court Reporter repeated the
18		answer as above recorded.)
19	Q	Do you have any knowledge of who the officers were
20		at Auto Dynamics?
21	A	The only officer that I would say that I really knew
22		of, I would believe, would be the person that signed
23		the lease.
24	Q	And who was that?
25	A	I think it was Mr. Slepan.

1	ର	Do you have any knowledge as to who were the
2		shareholders of the Corporation?
3	A	No.
4	Q	Do you recall who the bookkeeper was?
5	A	I don't know how to answer that. I know he was over
6		there doing some work, but what his title was
7	ୡ	Who are you referring to?
8	A	I referred to Mr. Tambs doing some of the book work
9		and later I believe Mr. Hildebrand.
10	Q	To your knowledge did the Primex Equities Corporation
11	10	ever receive any rent from Auto Dynamics?
12	A	To my recollection, no. Well, the only thing I can
13		remember is that I was told specifically to go over
14	1. 3. 34.	there and collect the rents from them like any other
15		tenant.
16	Q	By whom were you told?
17	A	By Mr. Bersani.
18	Q	Anyone else besides Mr. Bersani?
19	A	You mean who told me?
20	ୡ	Yes.
21	A	No.
22	Q	To your knowledge did Mr. Bersani advance any funds
23		to Auto Dynamics?
24	· A	I heard that he did, yes.
25	Q	Do you know of your own knowledge?

1	A I was not in the	e presence of him giving it, no.
2	Q Did Mr. Bersani	assist financially, to your knowledge,
3	any tenants in a	any of his holdings?
4	A Yes.	
5	Q Is this customar	A.
6	A As a developer	it is customary, yes.
7	i	MR. GROSSMAN: Objection, your Honor.
8	I don't bel	lieve that this man is an expert on
9	developers	
10	1	THE COURT: I will let it stand for
11	what it is	worth.
12	BY MR. KALL:	
13	Q Did Mr. Bersani	travel alot in the years '62 and '63?
14	A Yes, I would say	y so, very much.
15	Q Would you have	knowledge, would you know when he was
16	travelling?	
17	A Yes, because pr	imarily I was involved in getting the
18	tickets for him	every time he would go and also take
19	him to the airp	ort. Not all the time, but and of the
20	time.	
21	Q And do you have	any knowledge as to what portion of
22	his time was sp	ent away from Syracuse?
23	A I would say in	my own opinion he was there at lerst
24		out of five days a week.
25	Q In other words	, he was travelling 50% of the time?

1	A	At least.
2	Q	At least. And when he came to town, did he discuss
3		anything in particular /at any time?
4	A	Yes, we discussed everything. As a matter of fact,
5		being that I was directly involved with the tenants,
6		with the collections, with the complaints and so on.
7		Yes, we did discuss a lot of things.
8	Q	To your knowledge, did Mr. Bersani at any time have
9		any control over the funds of Auto Dynamics?
10	A	To my knowledge?
11	Q	Yes.
12	A	No.
13		MR. KALL: No further questions.
14		THE COURT: You didn't spend any time
15		with Auto Dynamics?
16		THE WITNESS: Me personally?
17		THE COURT: Yes.
18		THE WITNESS: No. No sir. Not that I
19		remember.
20		THE COURT: Or in the management or
21		operation of the company?
22		THE WITNESS: No.
23	11	CROSS EXAMINATION
24	BY	MR. GROSSMAN:
25	Q	Sir, did you say that Auto Dynamics only operated

1		the dynamometer and the diagnostic instrument. That
2		was its primary function?
3	A	I believe. That is what I believe, yes.
4	Q	It didn't run the entire Car Center?
5	A	Auto Dynamics per se?
6	Q	Yes.
7	A	No.
8	Q	I see. Would you say that Mr. Slepan ran the entire
9		Car Center?
10	A	That is what he was hired for.
11	Q	Didn't you think it strange that he was getting a
12		salary from Auto Dynamics while he was running the Car
13		Center?
14	A	I have no knowledge as to his salary and Mr. Slepan
15		did not report to me. He was the manager.
16	W.	THE COURT: Slepan reported to whom,
17		if you know.
18		THE WITNESS: At the time?
19		THE COURT: Yes.
20	1	THE WITNESS: When we were in the
21		development I saw Mr. Slepan report solely to
22	18 - 47 - 5	Mr. Bersani.
23	BY	MR. GROSSMAN:
24	Q	I see. When he was operating the entire Car Center,
05		he reported to Mr. Bersani?

1	A Who was this?
2	Q Mr. Slepan.
3	A Would you repeat that?
4	MR. GROSSMAN: Would you read the
5	question.
6	(The Court Reporter repeated the
7	question as above recorded.)
8	THE WITNESS: Yes.
9	BY MR. GROSSMAN:
10	Q Now, sir, did you say that in your experience it was
11	customary for landlords to advance money to tenants?
12	A Yes.
13	Q Does that happen frequently in the Syracuse area?
14	A Yes. May I add this in.
15	THE COURT: It works both ways.
16	THE WITNESS: Yes it would. You give
17	the money and pay the rent and so here is part
18	of the development. But they do it in a number
19	of ways, yes.
20	BY MR. GROSSMAN:
21	Q Now, sir, you just indicated to me that you didn't
22	know very much or you don't know very much about the
23	funds of Auto Dynamics; is that so?  A Right.
24	Q So when you say that to your knowledge Mr. Bersani
25	

1	didn't have control over the funds of Auto Dynamics,
2	to your knowledge, he may have but you are saying that
3	you don't know anything to the contrary?
4	A Right. I don't know.
5	MR. GROSSMAN: I have no other questions.
6	MR. KALL: One other question.
7	REDIRECT EXAMINATION
8	BY MR. KALL:
9	Q Mr. Zollo, after the Car Center was built and it was
10	in operation and Auto Dynamics was functioning, did
11	Mr. Slepan just still report to Mr. Bersani?
12	A I don't how to answer that. When you say report, they
13	had conversations, yes, but I was not in on them, so
14	I don't know if it was a report or conversation or
15	just a general discussion as the manager of the project
16	Q THE COURT: You didn't know what their
17	relationship was at the time?
18	THE WITNESS: I think he said report.
19	THE COURT: Yes he did.
20	THE WITNESS: I don't know.
21	MR. KALL: No further questions.
22	THE COURT: Let me ask you Mr. Zollo,
23	at one time you say that no, I will withdraw
24	that. During the time that you worked on this
25	project or projects, was you work always the same,

1	leasing, collecting rents and that sort of duty?
2	THE WITNESS: Yes sir. Basically, all
3	the same responsibilities.
4	THE COURT: And when did you go to work
5	first, if you can tell us.
6	THE WITNESS: I believe it was
7	THE COURT: Was it April '61?
8	THE WITNESS: I think it was '61, but I
9	am not sure. It might be '62. I really don't kno
10	I know my daughter was born in March and I believe
11	I joined Mr. Bersani the first of April.
12	THE COURT: And how long didyou work
13	for Mr. Bersani?
14	THE WITNESS: I believe I left in a
15	October '64.
16	THE COURT: And during that period you
17	were shifted from payroll to another?
18	THE WITNESS: No. Not really. It went
19	from if I am accurate here it was Bersani
20	Realty and Construction for a great deal of the
21	time, I believe, then when we worked on the
22	Primex building, I believe that is when I went
23	on the Primex payroll.
24	THE COURT: Were those offices together
25	Bersani and Primex?
20	

1	THE WITNESS: Yes.
2	THE COURT: Same staff?
3	THE WITNESS: Well, the only difference
4	was that Mr. Low, of course, was down in
5	Binghamton.
6	THE COURT: He was the principal?
7	THE WITNESS: Yes. And then there were
8	other people involved in New York.
9	THE COURT: That is people financing?
10	THE WITNESS: Yes.
- 11	THE COURT: But the actual operation is
12	centered out of this office in Syracuse?
13	THE WITNESS: Correct. Midtown Plaza.
14	THE COURT: Where was the office?
15	THE WITNESS: Midtown Plaza.
16	THE COURT: And the bookkeepers for all
17	the books were there?
18	THE WITNESS: Yes.
19	THE COURT: And were they the same
20	bookkeepers and accountants that worked on the
21	books, if you know, for instance for Bersani's
22	Realty and Primex?
23	THE WITNESS: Well, I don't know. There
24	were a number of accountants. I don't know
25	whether Sheldon did some work. Elmer Shay did

1	some work, Dick Brooks did some work.
2	THE COURT: You don't know by whom they
3	were paid?
4	THE WITNESS: No.
5	THE COURT: Except Mr. Bersani was there
6	and was a principal or guiding manager of the
7	entire operation.
8	THE WITNESS: Yes.
	MR. KALL: No further questions.
9	BY MR. GROSSMAN:
10	
11	Q Did you say left in October 1964?
12	A I believe. I think that is the year.
13	Q Where did you go after that?
14	A To Longley Jones Associates.
15	Q And what were the circumstances of your leaving, sir?
16	A At this time, Tony was having some financial problems.
17	Sherwood Fine, who was a principal of Longley Jones,
18	he needed a property manager, he knew us well, and
19	actually asked Tony if I was available.
20	Q This is Tony Bersani that you are referring to?
21	A Yes.
22	Q And Mr. Bersani didn't have any object to your leaving?
23	A Because of financial problems he asked if I wanted
24	to go with Longley Jones because of the situation, and
25	I said "if you want me to go."

1	Q Did he replace you with anyone?
2	A No.
3	Q And this was October 1964?
4	A I believe.
5	MR. GROSSMAN: I have no further
6	questions.
7	MR. KALL: No further questions.
8	THE COURT: Do you know whether or not
9	there were any companies other than Bersani
10	Realty and Primex that were in this office, this
11	central office?
12	THE WITNESS: There were other
13	Corporations.
14	THE COURT: That is connected in one
15	some way or another with Mr. Bersani?
16	THE WITNESS: I believe there were
17	other corporations that he was
18	THE COURT: Interested in?
19	THE WITNESS: Yes. There was Empire
20	Realty I believe.
21	THE COURT: What was that?
22	THE WITNESS: It was another shopping
23	center.
24	THE COURT: Through Mr. Bersani?
25	THE WITNESS: Yes.

1 THE COURT: And where was that, do you 2 know? 3 THE WITNESS: It was one of the shopping centers. I don't know which one it is. 4 5 THE COURT: All right. 6 MR. GROSSMAN: Nothing further. 7 (Witness excused.) MR. KALL: At this time, your Honor, 8 I would like, with the permission of Mr. Grossman, 10 to testify myself. 11 MR. GROSSMAN: I have no objection, your Honor. And I don't ask that he disqualify 12 himself. That is up to your Honor. 13 THE COURT: Well, it is an unusual 14 situation, but there is no jury here. I am going 15 to permit him. I think it would have been better 16 17 perhaps, knowing that you were going to be a witness, if you had someone else try the case. 18 But without a jury, I think I can separate your 19 credibility as a witness and I won't be impressed 20 by the fact that you are the counsel. 21 MR. KALL: Thank you, your Honor. 22 SHELDON G. KALL, called as a witness 23 in behalf of the Plaintiff, being first duly 24 sworn, testified as follows.

1	THE COURT: Do you want to proceed so
2	that counsel can make objections, if necessary,
3	in a question and answer form?
4	MR. KALL: I believe I would rather
5	state what I have to say in narrative form.
6	THE COURT: Is there any objection?
7	MR. GROSSMAN: There is no objection
8	other than the mere fact I will of course raise
9 .	a proper objection.
10	THE COURT: All right, proceed.
11	DIRECT EXAMINATION
12	THE WITNESS: I am an attorney at law
13	now. I am also a certified public accountant
14	licensed to practice in the State of New York.
15	on or about the first part of December
16	1962, I was engaged by Mr. Bersani to form a
17	corporation known as Auto Dynamics Corporation.
18	At that time, my offices were on the first floor
19	of the Midtown Plaza and Mr. Bersani's offices
20	were on the second floor.
21	Mr. Bersani was my landlord and
22	previous to my opening an office, I worked as
23	an employee for the accounting firm which did
24	some of the accounting for some of Mr. Bersani's
25	entities. Therefore, I had a knowledge of the

Bersani and related activities.

Mr. Borsani informed me that the shareholders for Auto Dynamics were to be Broncey Bersani, his wife, and Lana Low, Mr. Low's wife. They were each to own 50% of the corporation. I make it a practise whenever I form a corporation to also prepare a restrictive stock agreement whereby if any stockholder wishes to sell his stock, he must first offer it to the other shareholder. I dictated the restrictive endorsement on the stock certificate itself. The restrictive stock agreement was never signed by Mrs. Bersani or Mrs. Low, to the best of my recollection.

and we completed the corporation was formed and we completed the corporation kit, Mr. Bersani called me by phone and said to me not to go any further with Auto Dynamics as his attorneys in New York to Linking not to get involved. I asked what I should do with the papers and he advised me that someone else was taking over, that I would be contacted shortly as to what to do with the papers that I had.

To the best of my recollection, approximately the middle of January 1963 or the first part of February 1963, Mr. Carl Guy, attorney

1	at law, appeared in my office and said to me
2	"Sheldon, I am taking over the work you started
3	in Auto Dynamics. Please turn over your papers
4	to me."
5	I turned over my files in the Corporation
6	kit and I heard no more about Auto Dynamics at
7	that time.
8	THE COURT: Did you get a certificate
9	of incorporation?
10	THE WITNESS: Yes I did.
11	THE COURT: Who signed and filed the
12	application?
13	THE WITNESS: I did.
14	THE COURT: In your name?
15	THE WITNESS: No, I filed, I believe in
16	the name of two of my secretaries.
17	THE COURT: That is, you had dummy
18	incorporators?
19	THE WITNESS: I had dummy incorporators,
20	that is correct.
21	THE COURT: And that is as far as the
22	Corporation went to your knowledge.
23	THE WITNESS: To my knowledge yes, as
24	far as my knowledge.
25	THE COURT: And you filed a certificate

.

	(Mall - Miles)
1	of incorporation yourself with the two secretaries
2	as dummies.
3	THE WITNESS: That is correct.
4	THE COURT: When further instructions,
5	when the stock was to be issued, 50% to Mr.
6	Bersani's wife and 50% to Mr. Low's wife, what
7	about the money that was to be paid in?
8	THE WITNESS: I have no knowledge of
9	the money. I was engaged just to form the
10	Corporation.
11	THE COURT: Just to get a certificate?
12	THE WITNESS: Just to get a certificate.
13	It was 200 shares of no par stock.
14 .	BY MR. GROSSMAN:
15	
16	Q Now
17	THE WITNESS: I am not done with my
18	testimony.
19	THE COURT: You didn't make any of
20	these decisions yourself, or discuss them?
21	Who gave you the name for the Corporation?
22	THE WITNESS: The name, I couldn't say
23	for sure, but I believe it was Mr. Bersani.
24	THE COURT: And what about the bylaws?
25	Was there any discussion of bylaws?

	(Kall - Direct) 80
1	THE WITNESS: No, it never got passed
2	to that stage.
3	THE COURT: No discussions of the
4	provisions of the certificate of incorporation?
5	THE WITNESS: No. I used the stock
6	forms that a corporation could engage in in in
7	lawful activity in the State of New York, and the
8	bylaws were never signed or completed.
9	THE COURT: From what I understand
10	nothing was ever executed except the certificate.
11	THE WITHESS: That is to the best of
12	my recollection.
13	THE COURT: That is the application.
14	THE WITNESS: That is to the best of
15	my recollection, your Honor.
16	THE COURT: That is to you and the two
17	secretaries?
18	THE WITNESS: That is correct.
19	THE COURT: You must/held a meeting?
20	You must have had the minutes of the meeting?
21	THE WITNESS: The minutes were the
22	regular printed minutes that you buy.
23	THE COURT: Who was put in your place?
24	THE WITNESS: No str.
25	THE COURT: Don't the stock forms come
	With the second

at least at the time I practiced, don't they have blanks to fill in the names of the dumnies and put the true principals in?

THE WITNESS: That's right.

THE CCURT: But you left the principals' names blank.

THE WITNESS: Yes I did.

THE COURT: All right.

THE WITNESS: Now in October of 1963, I was engaged by Bruno Low and Mr. Bersani and an Attorney in New York City, and unfortunately I do not recall his name. He was the house counsel for Primex Equities Corporation, to make an audit of the Corporation for the fiscal year ended September 30, 1963.

THE COURT: Which Corporation?

THE WITNESS: Primex Equities Corporation.

In making this audit, by necessity I was involved

in the examination of records of many of the

other related entities in which Primex was

associated. I travelled to New York because

Primex had an office in New York. I travelled

to Binghamton because some of the entities were

headquartered in Binghamton and also worked with

the Syracuse effice.

on the basis of my audit, which I submitted to the Board of Directors of Primex sometime around the first part of 1964, the exact date I don't recall, and on the basis of my report I was summoned to a meeting in New York City, a Board of Directors meeting, and at that meeting the Directors who were there questioned the financial operations of the Corporation, the Primex Equities Corporation, the financial stability of the Corporation and it was at that meeting or shortly thereafter that Mr. Bersani was advised and I was advised that Mr. Bersani was no longer in control over Primex.

Now at that time Mr. Bersani and Mr. Low had interests in entities, corporations, partnerships, public and private throughout, and owned the property throughout the country. I know from my own knowledge that Mr. Bersani travelled a great deal. I knew from my own knowledge that he had received a mortgage commitment to construct the Primex office building, and I know that the mortgagee was the Sixty Trust Company who also had a mortgage on the Car Center.

I know that Mr. Bersani did help out the tenants in, some of his various tenants, helped then

out financially because I saw that while I was examining his records both for this audit and as an employee of the -- my previous employer.

Mr. Bersani had attorneys in New York and in Syracuse and he had attorneys in Binghamton and he had various accountants who would audit and run reports on his various entities.

THE COURT: He was involved in numerous activities?

THE WITNESS: Yes, numerous activities.

That is my testimony, your Honor.

THE COURT: Cross examine.
CROSS EXAMINATION

## BY MR. GROSSMAN:

- Now, sir, you know that your audit was begun at the end of 1964 rather than '63, and that Mr. Bersani left at the beginning of 1965 and not 1964; is that correct?
- A That is not so. My audit was for the fiscal year ending September 30, 1973, to the best of my recollection.

THE COURT: Do you have a copy of that?

THE WITNESS: All my audit and work

papers were subpoensed by the Security and

Exchange Commission in the year 1965 when they

were --- when Mr. Bersani was being investigated there, and I had not received my papers back.

THE COURT: You have no office copies or retained none?

office copies, were just picked up and kept. I know that it was for the fiscal year September 30, 1963, because I never was paid and I filed a claim with Primex as a creditor.

MR. GROSSMAN: Well, your Honor, I would like to read into the record at this point, and I want to use it for impeachment purposes -- I will not offer it until we put our case on, but I will read requests for admissions that were answered by Mr. Kall himself, and I wanted to use that for impeachment purposes.

THE COURT: There is no question you can do that.

MR. GROSSMAN: The United States, the Government sent out these requests for admissions and in the deposition of the plaintiff, Anthony R. Bersani, taken on July 9, 1970, Mr. Bersani stated on page 85 that it finally went down the drain in February '64. The actual month which he referred to here was February '65. That is

1 the first request. 2 The second request was in the deposition 3 Mr. Bersani stated on page 86: 4 "Well, in the fall, in the latter part of 1963 I 5 was finished, because I was out of Primex, I was finished." 6 The .ctual period to which Mr. Bersani 7 referred was the latter part of 1964. 8 The third request was: 9 10 "Plaintiff Anthony R. Bersani was relieved of 11 his duties as President of Primex in November 1964." 12 Okay. The Plaintiff answered the request 13 for admissions as follows: 14 "The Plaintiff by his attorney, Sheldon G. Kall, 15 16 replies to the defendant's request for admissions (1) admits the items 1, 2 and 3 in the defendant's 17 requests for admissions. Signed, Sheldon G. Kall, 18 Attorney." 19 BY MR. GROSSMAN: 20 You did sign that? Q 22 That is my signature, yes, but I must say your Honor that Mr. Bersani, when he stated it went down the 23 drain, that is when he was referring to the year ---24

THE COURT: Why didn't he sign these

1	requests for admissions?
2	THE WITNESS: I don't know. I don't
3	know. But there is no question in my mind the
4	audit was for the fiscal year December 30, 1963.
5	THE COURT: Was it made immediately
6	following would you be in a position in
7	October 1963 to have made an audit ?
8	THE WITNESS: No, my audit was completed
9	I believe in February of '64.
10	THE COURT: Did you engage in it
11	immediately at the close of the fiscal year?
12	THE WITNESS: Yes.
13	THE COURT: When did the Primex directors
14	pass a resolution to go into bankruptcy?
15	THE WITNESS: To my knowledge, your
16	Honor, at that time that Mr. Bersani was relieved
17	of his duties and I was no longer my only duties
18	with Primex was to complete this audit for this
19	particular year. Thereafter, I had no control.
20	THE COURT: This was just Primex?
21	THE WITNESS: Yes.
22	THE COURT: Not Bersani Realty or
23	Westchester?
24	THE WITNESS: No, just Primex.
25	BY MR. GROSSMAN:

	11	
1	Q	When Mr. Bersani asked you to incorporate Auto Dynamics
2		you were not the only attorney working for him?
3	A	I was not.
4	Q	As a matter of fact, you were not even the main
5		attorney working for him. Didn't he have a firm of
6		Fraser Coulter at that time?
7	A	Yes, he had other attorneys.
8	Q	And they did most of his work; isn't that correct?
9	A	I would say they did more work than I did.
10	Q	And he had other attorneys working for his as well;
11		is that so?
12	A	That is correct.
13	Q	So it is not unusual for Mr. Bersani to transfer a
14		corporation kit to you or to another attorney if he
15		had something else in mind with another attorney;
16		isn't that correct, sir?
17	Ą	I couldn't answer that question.
18	ନ	As a matter of fact, you don't know why Mr. Bersani
19		asked you to transfer that kit to someone else?
20	A	I do know. He told me he could no longer be involved
21		in it. And that somebody would be contacting me.
22	Q	Wasn't that an easy way of easing you out of taking
23		charge of Auto Dynamics?
24	A	I don't believe so, because I worked for Mr. Bersani
25		before and after it.

1	Q	For little jobs?
2	A	The audit on Primex was no little job.
3	Q	The audit for Primex was no little job?
4	A	Yes.
,5	Q	That was after he was in trouble?
6	A	No. Of course, I am not an expert
7	Q	He wasn't in trouble when he was asking for an audit
8		on Primex?
9	A	The audit has to be made each year to submit to the
10		stockholders and the Securities and Exchange Commission
11	Q	And you were making that out in the normal course?
12	A	Yes.
13	Q	Not because Primex was in trouble?
14	A	No.
15	Q	And you had to satisfy the creditors in New York?
16	A	No.
17		MR. GROSSMAN: I have/other questions,
18		your Honor.
19		MR. KALL: Thank you, your Honor. I
20		have no further witnesses, your Honor.
21		THE COURT: Plaintiff rests?
22		MR. KALL: I am sorry. I can't hear
23		you.
24		THE COURT: Plaintiff rests?
25		MR. KALL: Plaintiff rests, yes.

1	MR. GROSSMAN: At this time, your Honor,
2	I would like to move for a verdict in favor of
3	the Government.
. 4	THE COURT: I won't rule on your motion
5	at all at this time. I will wait until all the
6	evidence is in.
7	MR. GROSSMAN: First I would like to
8	move the admission, or request for admissions and
9	answers for request for admissions. There are in
10	the case file.
11	THE COURT: I assume/is familiar with
12	them. Any objection?
13	MR. KALL: The only objection I have
14	is the dates I testified to.
15	THE COURT: Those aren't objections to
16	the documents, are they?
17	MR. KALL: No.
18	THE COURT: All right. Have the clerk
19	mark them and receive them.
20	MR. GROSSMAN: The originals are in the
21	file.
22	THE COURT: All right, take them from
23	the Clerk's file. You are more familiar with
24	them than I am. I am not familiar with them at
25	all.

1 MR. GROSSMAN: Do you want them marked 2 as separate exhibits or treat them as pleadings 3 which are admitted? 4 THE COURT: If you are offering the 5 documents, mark them, have the clerk mark them as an exhibit. What is the rule on admissions? There are the same as depositions. Just filing them 7 8 doesn't put them in. 9 MR. GROSSMAN: That is correct. I move 10 the admission, but as far as marking them. I 11 believe your Honor has an option whether he wants 12 them as a separate exhibit. 13 THE COURT: Yes. That is the only way to keep track. You can mark the orginals. 14 15 The originals are filed. Keep the originals. 16 They bear the original signature. 17 MR. GROSSMAN: Fine. (Requests for admissions and answers 18 19 are marked as Defendant's Exhibits A and B for identification.) 20 THE COURF: Did you file the original 21 answers with the Clark? 22 MR. KALL: The original? No sir. 23 24 THE COURT: You see the problem, Mr.

25

Grossman, is in the state court the attorney

1	keeps the papers.
2	MR. GROSSMAN: I see.
3	THE COURT: Very often we file files
4	without an answer.
5	MR. KALL: I sent the original of this
6	paper to Mr. Sullivan.
7,	THE COURT: To the Government.
8	MR. GROSSMAN: I see.
9	THE COURT: All right. Here the
10	rules require that originals all be filed with
11	the clerk.
12	All right, I will receive them.
13	(Defendant's Exhibits A and B previously
14	marked for identification received into evidence.)
15	THE COURT: These are the requests for
16	admissions and the answers to them.
17	MR. GROSSMAN: That is correct.
18	THE COURT: All right.
19	MR. GROSSMAN: Call Ronald B. Slepan.
20	RONALD B. SLEPAN, called as a
21	witness in behalf of the Defendant, being first
22	duly sworn, was examined and testified as follows.
23	DIR CT EXAMINATION
24	BY MR. GROSSMAN:
25	Q Will you state your full name?

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1	A	Ronald Baank Slepen.
2	વ	What is your current address?
3	A	Churchill, New Jersey.
4	વ	And what is your present occupation, sir?
5	A	I am a salesman for Eastern Wire & Cable Company.
6	Q	Could you indicate your educational background?
7	A	I graduated from Penn State in 1953.
8	વ	Now, sir, what was your occupation before you joined
9		in the Bersani Reulty Corporation?
10	A	I was working for a firm that manufactured dynamometers
11	Q	And where was this firm located, sir?
12	A	Riverside, New Jersey. I believe Palmyra, New Jersey.
13	Q .	How did you come into contact with Anthony Bersani?
14	A	We had heard, perhaps we read in the paper that there
15		was a car center being formed in Syracuse and I was
16		sent up to try to find out what was happening and
17		talked to I believe a Mr. Ackerly of the corporation.
18	Q	I see. The car center was already in the planning
19		stages?
20	A	The basic idea had already been conceived, yes.
21	Q	What transpired after you met with Anthony Bersani?
22	A	I had had several meetings and he asked Lome opinions
23	1	of me as far as planning of the car center. I gave
24		him what knowlyedge and opinmons I had, and after
25		several meetings he offered me a job.

1	Q	And did he offer you a job, if you recall, with Bersani
2		Construction? One of the Bersani Corporations?
3	A	Yes.
4	Q	Did you sign a contract with him?
. 5	A	Yes.
6	Q	What was the period of the contract?
7	A	Three years.
8	ବ	For how much per year, sir?
9	A	\$20,000.
10	Q	Did you work for Mr. Bersani beginning with that
11		contract or did you begin operations somewhere else?
12	A	Beginning with that contract.
13	Q	Now, sir, when did you become/with Auto Dynamics?
14	A	Oh, '62, I believe.
15	Q	And in what capacity, sir?
16	A	Well, that is really when the attempt was being made
17		to seek leases for the Car Center and also to formu-
18		late and help lay out the physical plan of the Car Cente
19	. Q	And so what was your function then with Auto Dynamics,
20		sir?
21	A	I was on their payroll more than anything else but my
22		job was in the overall activities of the Car Center
23	0	more specifically than with Auto Dynamics per se.
24	Q	When did Auto Dynamics actually begin its operations;
25		do you recall?

1	A	It would have been in the spring of '63, as far as
2		the activity on fixing automobiles.
3	ୡ	What was your position with the Corporation? Your
4		formal title?
5	A	President.
6	Q	Do you recall who the other officers were?
7	A	I believe John Petrucci was Vice-President and Aubrey
ь		Tambs was Secretary-Treasurer.
. 9	Q	Did you hire Mr. Tambs for that job?
10	A	No.
11	Q	Who did hire Mr. Tambs?
12	A	He was merely sent over by Mr. Bersani.
13	Q	Had he been working for Mr. Bersani before?
14	A	Yes he had.
15	Q	Did you set his salary at Auto Dynamics?
16	A	No.
17	Q	Who set his salary?
18	. A	I have no idea. Probably Mr. Bersani.
19	Q	I see. The salary was set when he came over?
20	<b>A</b> .	Yes.
21	Q	Were you consulted about the salary at all?
22	A	No.
23	Q	Did you actually hire Mr. Petrucci?
24	A	I knew of Mr. Petrucci and I suggested to Mr. Bersani
25		that we interview him with the possibility of hiring

		Mr. 45-4 45-4 343
1		him, that is what we did.
2	9	I see. Mr. Bersani did interview him?
3	A	Yes.
4	Q	And he agreed to hire him?
5	A	Yes.
6	Q	Now later on, was there anyone who was added to the
7	*	organization, who was involved at all in keeping the
8		books of the Corporation.
9	A	Mr. Hildebrand.
10	Q	And who hired Mr. Hildebrand?
11	A	Mr. Bersani.
12	Q	Did you know Mr. Hildebrand before?
13	A	Not at all.
14	Q	Did you interview him prior to his receiving the job?
15	A	No.
16	Q	Did you set his salary?
17	A	No.
18	Q	Was he already hired and his salary set when he came
19		to see you?
20	A	Yes.
21	Q	Did you own any stock in Auto Dynamics?
22	A	No.
23	ର	Did you invest any money in Auto Dynamics?
24	A	No.
25	Q	Did you have any money to invest in Auto Dynamics?

	11	
1	A	No.
2	Q	Did you have any agreement to share in any potential
3		profits in Auto Dynamics?
4	A	No.
5	Q	Did Mr. Bersani make any specific promises to you of
6	Line II	any amounts of stock that you would receive in Auto
7		Dynamics?
8	A	No.
9	Q	Did he make any written offers to you of stock in
10		Auto Dynamics?
n.	A	No.
12	Q	Was any stock ever turned over to you of Auto Dynamics?
13	A	No.
14	Q	In the early stages of Auto Dynamics, did it have
15	1101	in the early stages of its operations, did it have
16		adequate financing to meet all its credit obligations?
17	A	It had no financing whatever.
18	: Q	Were you ever promised any financing?
19	<b>A</b> .	Yes.
20	Q	Who promised you financing?
21	A	Mr. Bersani.
22	Q	Do you recall how much he promised?
23	A	In terms of \$700,000.
24	Q	You were the were there any creditors who were
25		satisfied during the operations of Auto Dynamics?

1	A	I suppose so.
2	વ	There were people getting paid?
3	A	Yes. Yes.
4	વ	Was the payroll met all of the time?
5	A	During the time I was there, it would sometimes be,
6		some of us would get paid on time; sometimes the checks
7		that were issued were rejected and so in that sense
8		of the word it was not paid on time.
9	Q	I see. But eventually it was paid.
10	A	Yes, to the best of my knowledge.
11	Q	You don't recall anyone who didn't get his wages or
12		salary?
13	A	Noty time I was associated.
14	Q	How were these credit obligations and payrolls met,
15		sir?
16	A	Mr. Tambs and/or Mr. Hildebrand would have emergency-
17		type meetings with Mr. Bersani and bring to his
18		attention that the company was under pressure and
19		certain things had to be paid, and that was how they
20		were paid or not paid.
21	Q	I see. Where did the financing come from?
22	A	I have noidea.
23	Q	But it all came through Mr. Bersani?
24	A	Yes.
25	Q	Were there any Corporations of Mr. Bersani's that were

1		depositing the money for Auto Dynamics's account, that
2		you can recall, sir?
3	A	I know the money was coming from over there, from the
4		Bersani offices. Now specifically what Corporations
5		were giving the moneys, I don't know.
6	ବ	Now, sir, with all these creditors, I take it all the
7		creditors were not satisfied during the operations of
8		Auto Dynamics?
9	A	Once again, to the best of my knowledge, while I was
10		there. Whether they were afterwards, I don't know.
11	Q	Who made the decision of which creditors were to be
12		paid?
13	A	We would say, a sheet was formed, Mr. Hildebrand would
14		form a sheet periodically, once a week or more often,
15		and list in order the people who were pressuring, and
16		take it up with Mr. Bersani, and as a result of the
17		discussion, some of those people were paid.
18	Q	There was specific amounts set aside for payment to
19		those creditors?
20	A	I don't believe they were set aside. They were
21		specifically given for specific amounts.
22	Q	Specifically marked by Mr. Bersani or his Corporation
23		specifically to pay the creditors?
24	A	Yes. Yes.
25	Q	Do you recall where the payroll came from, sir?

1	A	This was something that mysteriously would come across
2		the street Friday afternoon. How it worked, I don't
3		know.
4	Q	When you say, "across the street" what do you mean?
5	A	From Mr. Bersani's office over to the Car Center.
6	Q	Did you become aware, sir, at any time of withholding
7		taxes that were due the Government that were not being
8		paid over to the Government?
9	A	Yes.
10	Q	And how did you become aware of this?
11	A	Mr. Connors came to visit and also Mr. Tambs told me
12		we were delinquent.
13	Q	Is that Mr. James Connors?
14	A	Yes.
15	Q	And he was the Government officer?
16	A	Yes.
17	Q	Had you known him before the withholding taxes were
18		delinquent?
19	A	No.
20	Q	Now when he came to you did you pay him immediately,
21		sir?
22	A	I never paid him at all. It was not my function to
23		pay him, nor could I have, because we didn't have the
24		funds. I told him it was just impossible. I was not
25		in control of that situation.

1	Q	Did you refer him to anyone?
2	A	Yes, to Mr. Bersani.
3	Q	Did he ever receive payment from Mr. Bersani for any
4		withholding taxes that were in arrears?
- 5	A	I think he did.
6	৭	But not do you recall whether any well, strike
7		that. Sir, were you ever cautioned by Mr. Connors
8		that you yourself might have a financial liability
9		for withholding taxes that were in arrears by the
10		Corporation?
11	A	Yes.
12	Q	Did you ever attempt to raise any money on your own
13		without Mr. Bersani, to satisfy the withholding?
14	A	There was a loan that was made in, during December 1,
15		1963, I believe, which I was a guarantor, it was in
16		the name of MKC Tire Corporation, to pay the quarter.
17	Q	Were you also an officer of MKC Tire Corporation?
18	A	Yes.
19	Q.	Who else were officers of the MKC Tire Corporation?
20	A	Hoyt McPherson was President and Aubrey Tambs was
21		Secretary-Treasurer.
22	Q	Do you know who placed those people as president and
23		secretary of MKC Tire?
24	A	Mr. Bersani.
25	Q	Why did you attempt to secure a loan from MKC Tire,

1		do you recall?
2	A	As opposed to Auto Dynamics?
3	Q	Yes.
4	A	I believe Mr. Hildebrand, who had knowledge of this
5		thing more than I did, and Mr. Bersani thought we could
6		more easily borrow money on MKC Tire Company than
7		Auto Dynamics, because it was a more wholesome company.
8	Q	Their ?inancial standing was better?
9	A	Yes.
10	Q	Did you ordinarily guarantee loans, or attempt to personal
11		guarantee loans to be secured by Auto Dynamics?
12	A	No.
13	Q	Why did you attempt to guarantee that loan, sir?
14	A	It was a particularly critical quarter. As I remember,
15		there had been some difficulty in the earlier quarters.
16	1	and there was a great deal of pressure for that partic-
17		ular quarter to be paid. Actually, I think it was
18		prepaid and I borrowed the money with the understanding
19		it was going to go for that particular quarter.
20		Because everything prior to that had been satisfied.
21	Q	So that these moneys were part of your personal liability
22	A	I felt I had no liability because I felt I was not responsible, but it was to the best interest of the
23		operation that it be paid.
24	A Lago	
25	Q	Now, sir, in your opinion who was in control of the

1		finances of Auto Dynamics?
2	A	As far as the check signature it was Mr. Tambs, but
3		the decisions were made primarily by Mr. Bersani.
4	Q	Did Mr. Tambs make any independent decisions on his
5		own, do you recall?
6	A	I don't recall, but if there were any they were of a
7		minor nature.
8	Q	Do you recall what Mr. Tambs was earning in salary?
9	A	I have no idea.
10	Q	Now, sir, when did you leave Auto Dynamics?
11	A	April of '64.
12	Q	And do you recall the circumstances under which you
13		left, sir?
14	A	Mr. Bersani decided that I should leave.
15	Q	Did he just fire you?
16	A	Yes.
17	Q	Did he pay off the remainder of your contract?
18	A	Yes. No. No. I am sorry. He didn't pay. There was
19		a weeks pay.
20	Q	The remainder of the week?
21	A	He paid me the week that was due me but didn't pay off
22		the contract. That was returned to he with the last
23	***	weeks pay.
24	Q	Who was put in to replace you, sir?
25	A	I believe Hoyt McPherson.

?

		(11)
1	Q	Did Mr. Petrucci leave at about the time you left?
2	A	I think he preceded me. He left before I did.
3	6	Under what circumstances did he leave?
4	A	Mr. Bersani dismissed him as well.
5	Ą	Now, sir, were you ever assured by Mr. Bersani that
6		the withholding taxes in arrears would be paid?
7	A	Yes. It was verbally promised to me that these would
8		be taken care of.
9		MR. GROSSMAN: I have no other questions.
10		Oh, I am sorry, Your Honor, I do have.
11		Your Honor, at this time I have one big
12		physical exhibit that I would like to have marked
13		as one exhibit, and it is all the checks of Auto
14		Dynamics for the period of, for the entire period
15		that we have in suit, and the main purpose for
16	-	these being here is to show the magnitude of the
17	,	monies going out of the Corporation to specific
18		other creditors, that is creditors other than
19		the United States. And it has the checks have
20		Mr. Tambs signature on them, and I would like to
21		show the witness some of the checks and ask him :
22	1,	he can identify the signature. But I don't think
23		t's C irt would find it proper to go through all
24		the checks. And I believe Mr. Kall has agreed

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he would have no objection to the demonstration. Is that correct?

THE COURT: All right. If there is no objection, just offer it and it will be received. Any objection?

MR. KALL: I have no objection to the admission of the checks. All I wish to state is I have not examined each and every envelope, but I presume they are the cancelled checks.

THE COURT: Supposing we do this. Mark this exhibit. It will be Exhibit C. Mark it C-1 etc. right on, with the understanding that what is being offered are cancelled checks of the Auto Dynamics Corporation. That is your understanding?

MR. KALL: Yes, your Honor.

THE COURT: So if someone else's check is mixed in there by mistake, it is neither offered nor received.

MR. KALL: Yes, your Honor.

THE COURT: All right, with that understanding the exhibits may be marked and I will receive them. The C series, C-1 on.

(Checks referred to above marked as Government's Exhibits C-1 etc.)

MR. GROSSMAN: There is no particular order, and actually I am going to leave them with the Court. I take it here we do leave all

the Exhibits with the Court.

2	THE COURT: Yes, unless you need them
3	for briefing.
4	MR. GROSSMAN: Your Honor, I don't think
5	we will have to refer specifically to any of these
6	THE COURT: Have you got a summary of
7	them?
8	MR. GROSSMAN: No, but I think the purpos
	ino, but I thank the purpos
9	is really to show the magnitude of the money's
10	going out, and it is for the Court's own use as
11	to determine whether or not there was sufficient
12	amount. I believe there is at least a ten fold
13	the amount that we have in suit here as going in
14	and out of the account.
15	THE COURT: That can be determined from
16	the
17	MR. GROSSMAN: The summary of account,
18	that is correct.
19	THE COURSE (C
	THE COURT: (Continuing) from the
20	lager sheets. I think somebody ought to tie that
21	in. Somebody ought to do that for me. I don't
22	think I ought to sit down with an adding machine.
23	If it is of any probative worth, whoever it is of
24	a probative worth to, better get an adding
25	machine out and tell me what it is. I have

I don't know what if any probative worth they have until somebody demonstrates it to me. Right now it is a lot of papers, as far as I am concerned.

MR. GROSSMAN: One of the elements the Government has to prove is there were other creditors that were preferred over the Government, and had they not the Government would have been paid, and this is to show the magnitude and those paid in preference to the Government. I think the Exhibits speak for themselves. And that is the only purpose at this point. If there is any purpose for any particular check or particular month I would take it out of there and mark it as a separate exhibit.

THE COURT: You are trying the case.

MR. GROSSMAN: Okay, then I have no further questions.

I am sorry, your Honor, I still have one more exhibit I would like to have the witness identify.

(Stock certificates marked as Government's Exhibits D and E for identification.)

BY MR. GROSSMAN:

Q Now, sir, I hand you what has been marked for

1	identification as defendant's Exhibit D and also
2	defendant's Exhibit E, which purport to be stock
3	certificates in Auto Dynamics of Syracuse Incorporated,
4.	one made out to Broncey Bersani in the amount of fifty
5	shares of common stock and the other made out to Lana
6	Low ir as amount of fifty shares of common stock, and
7	I alk yet whether you recognize these documents:
8	A Yes. Diev have my signature.
9	Q And these certificates are stock made out to
10	Mrs. Dersani and Mrs. Low?
11	A Well, they are here. I mean they are physically made
12	out now at this point.
13	MR. GROSSMAN: I offer these into
14	evidence, your Honor.
15	MR. KALL: I have no objection.
16	THE COURT: Received.
17	(Government's Exhibits D and E for
18	identification received into evidence.)
19	MR. GROSSMAN: Now I have no further
20	questions.
21	THE COURT: You may cross.
22	MR. KALL: I should like to have these
23	marked.
24	(Two papers marked as plaintiff's
25	Exhibits 1 and 2 for identification.)

1		CROSS EXAMINATION
2	RV I	MR. KALL:
3	Q Q	
4	3	Mr. Slepan if I recall your testimony, you stated that
5		you were never a shareholder in Auto Dynamics; is that correct?
6	A	That is the best that is correct.
7	Ri -	Well, either you were or were not a shareholder.
8	A	I was not.
9	Q	I show you plaintiff's Exhibit 2, and I ask you to
10		identify this.
11	A	That is a balance sheet.
12	Q	Is this not a financial statement submitted on behalf
13		of Auto Dynamics to Marine Midland Trust Company of
14		Central New York, dated July 31, 1963?
15	A	Yes.
16	Q	And I ask you, sir, if this is your signature?
17	A	It looks like it, yes.
18		MR. KALL: I offer this in evidence,
19		your Honor.
20		MR. GROSSMAN: I have no objection.
21		THE COURT: Received.
22		(Plaintiff's Exhibit 2 for identification
23		received in evidence.)
24		THE COURT: What is this, for the pur-
-		pose of impeaching the witness?

1	MR. KALL: Yes, your Honor.
2	THE COURT: All right. It is received
3	for the purpose of impeachment.
4	BY MR. KALL:
5	Q Mr. Slepan, I show you page 4 of this financial
6	statement in which it asks the number of shares of
7	stock owned by the offices of the Corporation, and I
8	ask you to state how many shares of stock you owned.
9	A It shows here 66 2/3.
10	Q And how many shares does it show Mr. Petrucci owned?
11	A The same amount.
12	Q And how about Mr. Tambs?
13	Same amount.
14	Q Am I correct in my arithmetic
15	THE COURT: I will take judicial notice
16	that it is what?
17	MR. KALL: 200 shares, your Honor.
18	THE COURT: All right.
19	BY MR. KALL:
20	Q I show you plaintiff's Exhibit 1 and ask you to
21	identify this, sir.
22	A I have it.
23	Q Yes, what is it, sir?
24	A It is a letter to Mr. McDonald of Marine Midland Bank.
05	O Paganding what?

1	A	The ownership of Auto Dynamics.
2	Q	And I ask you, is this your signature?
3	A	Yes.
4		MR. KALL: I offer this in evidence
5		your Honor.
6		MR. GROSSMAN: I have no objection,
7		your Honor.
8		THE COURT: Received. Is this for the
		same purpose Mr. Kall?
0		MR. KALL: Yes, your Honor.
1		THE COURT: Exhibit 1 received in
2		evidence.
		(Plaintiff's Exhibit #1 for identification
		received in evidence.)
	BY I	R. KALL:
	Q	Mr. Slepan, does this letter bare your signature
		dated August 24, 1963 addressed to Marine Midland
1		Trust Company indicate that you are a shareholder of
1		Auto Dynamics; yes or no?
,	A	No.
ı	Q	It says you are not a shareholder?
2		MR. GROSSMAN: I am sorry. Could you
3		repeat the question before? I got the answer.
		(The Court Reporter repeated the
		question and answer as above recorded.)

1	MR. GROSSMAN: I object to the last
2	question on the grounds the document speaks for
3	itself and also on the grounds that the witness
4	has already answered the question and this is
5	merely berating the witness further.
6	THE COURT: Well, the document speaks
7	for itself. I will look at it. Is this your
8	signature?
9	THE WITNESS: Yes sir.
10	THE COURT: And it is also signed by
11	Mr. Tambs and Mr
12	THE WITNESS: Petrucci.
13	THE COURT: Petrucci.
14	MR. KALL: Thank you, your Honor.
15	BY MR. KALL:
16	Q Mr. Slepan, is it not a fact that at the present time
17	you as an individual have been assessed for withholding
18	taxes due by Auto Dynamics to the United States
19	Government?
20	A Yes.
21	Q Do you know the amount of taxes assessed against you?
22	No, not exactly.
23	The approximate amount?
24	A In the neighborhood of eleven or twelve thousand
25	dollars, I believe.

1	Q	Is there now any suit pending in any other court
2		regarding the taxes allegedly owed by you?
3	A	No.
4	Q	You have not instituted a suit against the Government?
5	A	For a refund?
6	Q	Yes.
7	A	I am sorry. I misunderstood. My attorney instituted
8		a suit.
9	Q	Isn't this in the Eastern District of Pennsylvania?
10	A	Yes.
11	Q	And you were attempting to have a discount of the
12		fourth quarter of 1963 evaded?
13	A	I am afraid I don't know the legalities of it. this
14	9,	is something that had to be done legally, and I don't
15	Know	specifically what the processes are.
16	Q	During the operations of Auto Dynamics did Mr. Bersani
17		handle the making of the daily or weekly bank deposits?
18	A	No.
19	Q	Who did that?
20	A	Mr. Tambs.
21	Q	Did Mr. Bersani ever sign any checks?
22	A	Auto Dynamics checks?
23	Q	Yes.
24	A	Not to my knowledge.
25	8	Did he ever prepare any checks?

1	A Not to my knowledge.
2	Q Who prepared the checks?
3	A Mr. Tambs and/or the girl that may have worked for him.
4	I am not sure.
5	Q If in fact Mr. Bersani did make out a check, would the
6	check bearing his signature on the Auto Dynamics
7	MR. GROSSMAN: Objection, your Honor.
8	THE COURT: I have not heard the question
9	yet.
10	MR. KALL: No, I have not asked the
11	question.
10	
12	MR. GROSSMAN: Well, I believe there is
13	à hypothetical pose to it.
14	THE COURT: State your question.
15	BY MR, KALL;
16	Q If in fact Mr. Bersani did make out a check possibly
.	
17	to any creditor and did sign his name, to your knowleds
18	would the bank have honored this check?
19	A I don't know.
20	Q Did he have authority to sign on the bank account?
21	A I don't know
22	Q Tho had the authority?
23	A Mr. Tambs and I believe I did, and perhaps Mr. Petruc-
24	ci, but I am not sure.
25	Q Isn't it a fact that the records indicate that Mr.
CONTRACTOR OF STREET	

1	Bersani did not have authority?
2	A I don't know. Specifically did not have authority?
3	Q Yes.
4	A I don't know.
5	THE COURT: Well, do you deny that?
6	MR. KALL: Yes I do. Will you give me
7	one moment your Honor. May I have this marked?
8	(Bank authorization marked as Plaintiff'
9	Exhibit #3 for identification.)
	BY MR. KALL:
10	
11	
12	you if you can identify same.
13	A They are difficult to read, but it appears to be a account bank authorization, checking/authorization.
15	Q I see. And according to this bank letterhead, is this
	your signature here?
16	A I can't make it out.
18	Q Would you recognize Mr. Tamb's signature? Is that Mr.
• f. :	Tamb's signature?
19	A It is kind of dull also, but it looks like his signa-
20	ture as I recall it.
21	
22	MR. GROSSMAN: Your Honor, I will
23	stipulate that Mr. Slepan was authorized to sign
20	checks at the bank, and I have no objection to
24	the admission of that with Mr. Slepan's signature
25	on that.

The state of the state of

(010)011 01001
MR. KALL: I offer plaintiff's Exhibit 3
your Honor.
THE COURT: Received.
(Plaintiff's Exhibit #3 for identification
received in evidence.)
THE COURT: This I assume is from the
Corporation files?
MR. KALL: Yes, your Honor. No, this
came from Marine Midland Bank records.
BY MR. KALL:
Q Now, Mr. Slepan, I ask you to examine plaintiff's
Exhibit 3 and I ask you to state from these records
of Maline Midland Trust Company of Central New York
who was authorized to sign checks on behalf of the
Corporation.
A Once again, there is Mr. Tambs signature that I can't
read and I don't know if this is mine or not, but I
suppose it is.
Q According to these records was Mr. Bersani authorized
or empowered to sign?
A No.
THE COURT: Can I see the Exhibit?
MR. KALL: Yes.
(Hands document to the Court.)
THE COURT: 1, 2 and 3 came from some

Ø.

1	other proceeding, didn't it?
2	MR. KALL: Yes. We had an examination
3	before trial in Syracuse with Mr. Grossman and
4	the bank officer from Marine Midland who brought
5	the records.
6	THE COURT: And these were the Exhibits
7	used on that deposition?
8	MR. GROSSMAN: Yes, your Honor. These
9	are defendant's Exhibits that are marked.
10	THE COURT: Yes.
11	MR. GROSSMAN: And unfortunately the
12	bank officer couldn't bring the originals because
13	they were old.
14	THE COURT: I am just trying to identify
15	the markings.
16	BY MR. KALL:
17	Q Mr. Slepan, did Mr. Bersani ever instruct you or any-
18	one else to your knowledge to pay the net payroll?
19	A Yes.
20	Q When did he do that?
21	A I don't remember specifically when.
22	Q Did he ever tell you not to pay the withholding?
23	A He suggested that we postpone it because the money was
24	needed for other purposes, but that it would be
25	available in short order.
	\$5.44 PK 150 PK

1	Q Did Bersani or his related enterprizes advance money
2	to Auto Dynamics?
3	MR. GROSSMAN: I am sorry. Could you
4	read the question.
5	(The Court Reporter repeated the
6	question as above recorded.)
7	A The money was paid in, whether it was advanced
8	specifically, what it would be called I am not sure,
9	but I know money did come from Mr. Bersai in some form.
10	Q Did you ever prepare any payroll tax or other tax
11	returns?
12	A No.
13	Q Did you ever sign them?
14	A I don't recall that I did. I believe Mr. Tambs did,
15	BUT I don't recall for sure.
16	MR. KALL: I should like to have this
17	marked.
18	(Employee's quarterly tax return marked
19	as Plaintiff's Exhibit #4 for identification.)
20	BY MR. KALL:
21	Q Mr. Slepan, I ask you to examine plaintiff's Exhibit 4
22	and ask you to identify same.
23	A Employer's quarterly tax return.
24	Q For what corporation?
25	A Auto Dynamics of Syracuss.

	MR. KALL: I wish to offer it in evidence
	THE COURT: Any objection?
	MR. GROSSMAN: Well, I have no objection
	but I would like permission at some time to with-
	draw the originals and file copies. I didn't know
	Mr. Kall wanted to take these.
	THE COURT: These are the originals?
	MR. GROSSMAN: These are the originals
-	that Mr. Kall just requested from me.
	THE COURT: The Exhibits are received
	with the right to withdraw the originals and
	substitute photocopies.
	(Plaintiff's Exhibit #4 for identificate
	received in evidence.)
BY	MR. KALL:
Q	Mr. Slepan, I ask you to examine these payroli reports
	and ask you if anyone other than Mr correction
	whether Mr. Bersani ever signed any of these reports?
	MR. GROSSMAN: Your Honor, I am going
	to object. I think these Exhibits speak for
1	themselves and they show very clearly in any
1000	event who signed them.
17.5	THE COURT: Sustained.
ВУ	MR. KALL:
Q	Mr. Slepan, while you were associated with Auto Dynami

U.S. COURT REPORTERS FEDERAL BUILDING

1	to your knowledge was the Corporation making any profits?
2	A I don't believe so.
3	Q Were there other creditors pressing for funds?
4.	A Yes.
5	Q Were there any creditors who were preferred over the
6	Government?
7.	A I don't quite understand. Who were getting paid rather
8	than the Government?
9	Q Yes.
10	A I suppose there were.
11	Q Was anyone given preference over the Government? Did
12	you not pay the Government in order that you might
13	prefer to pay somebody else?
14	MR. GROSSIAN: Your Honor, I object.
15	He is asking for a legal conclusion
16	
17	THE COURT: Sustained.
13	MR. GROSSMAN: (Continuing) on the
	part of the witness.  THE COURT: Sustained.
19	THE COURT: Sustained.
20	BY MR. KALL:
21	Q Did you ever hear of Malcolm Sutton or Sutton Real
22	Estate?
23	A Yes.
24	MR. GROSSMAN: I am sorry. I didn't
25	hear that whole question.

1		(The Court Reporter reported the
2		question as above recorded.)
3	BY I	R. KALL:
4	Q	Did Mr. Sutton take over the management of the Midtown
5		Car Center while you were still in the employ of Auto
6		Dynamics?
7	A	I don't believe so.
8	Q	Who was paying the workman's compensation insurance
9		at that time?
10	A	I have no idea.
11	Q	Do you know if the workman's compensation was being
12		paid?
13	A	No,
14	Q	Who owed the furniture?
15	A	I don't know.
16	Q	Was the furniture under lease from a leasing company?
17	A	I am not sure.
18	Q	Isn't it a fact, Mr. Slepan, that other than the day
19		to day expenses no creditor was really receiving pay-
20		ment on his account?
21		MR. CROSSMAN: I am sorry. I didn't
22		hear it. Could I hear that question.
23	777.	(The Court Reporter repeated the
24		question as above recorded.)
25	A	I don't know the use of your word "day to day."

a

1	Q	Well, when a man came in and needed equipment, he needs
2		part for his car, or the tire bill had to be paid,
3		weren't these bills that were being paid?
4	A	Yes.
5	Q	But the rent was not being paid?
6	A	I don't know.
7	Q	And you had no knowledge about the compensation
8		insurance?
9	A	No I don't.
10		MR. KALL: All right. I have no further
11		questions, your Honor.
12		REDIRECT EXAMINATION
13	BY M	R. GROSSMAN:
14	Q	Who generally signed the financial papers for the
15		Corporation, sir, such as withholding tax returns?
16	A	Nr. Tambs.
17	Q	And checks of the Corporation?
18	A	Mr. Tambs.
19	2	Did he decide the policy as to who got paid in addition
20		to usually signing the incrument, sir?
21	A	At a very minor level. That is the only thing he would
22		have made judgments on.
23	ર	Now, sir, do you have any recollection of having signed
24		plaintiff's Exhibit 2, which is that application to the
25		Marine Midland Trust Company ?

1 A No. 2 MR. KALL: Your Honor, I object to 3 that question. The document speaks for itself. MR. GROSSMAN: Will you repert the question. 5 THE COURT: The document doesn't say 6 whether he has a recollection. He has accepted 7 8 this as his signature. He is asking the circumstances surrounding his signature. 9 Who prepared this, do you know? 10 11 THE WITNESS: I have ldea. 12 THE COURT: Did you? 13 THE WITNESS: Did I? 14 THE COURT: Yes. 15 THE WITNESS: Oh gosh no. THE COURT: I notice here among the liability is a liability of dollars 84,210.11 17 common stock, capital liability. Did you put 18 in that sum or any part of it? 19 THE WITNESS: Not a penny, sir. 20 21 BY MR. GROSSMAN: 22 Who generally prepared the financial documents of the Q 23 Corporation? It could have been Mr. Hildebrand or could have come 24 from Mr. Bersani's office. I really don't know.

	(Siepan = Neutrech) 1/3
1	Q Did you generally sign instruments that you were
2	requested to by Mr. Bersani?
3	A Yes.
4	THE COURT: Now as I look at this Exhibit
5	2, this appears to be signed by Mr. Slepan and Mr.
6	Tambs; is that right?
7	
8	MR. GROSSMAN: That is correct, your
9	THE COURT: All right. The letter of
10	a few days earlier dated August 24 was signed by
11	Tambs, Slepan and Petrucci.
12	THE WITNESS: Yes, sir.
13	THE COURT: Did you dictate this letter?
14	THE WITNESS: No, sir.
15	THE COURT: I notice it is dictated on
16	Midtown Car Center stationery. Is that some
17	stationery that is different from the Auto
18	Dynamic stationery?
19	THE WITNESS: I really don't know, sir.
20	THE COURT: I notice there is no
21	dictation symbols on there, just the stenographer's
22	symbols. Do you know who dictated the letter?
23	THE WITNESS: I don't have the faintest
24	idea.
25	THE COURT: All right.

1	THE WATNESS: I know that I did not.
2	THE COURT: Midtown Car Center is a
3	designation of the entire project; isn't it?
4	THE WITNESS: Yes sir.
5	BY MR. GROSSMAN:
6	
	Q Now, sir, at the time
7	THE COURT: Do you know Mr. McDonald
8	of the bank?
9	THE WITNESS: No.
10	THE COURT: Did you ever have any
11	dealings with him?
12	THE WITNESS: To the best of my
13	knowledge, I did not.
14	BY MR. GROSSMAN:
15	Q Now, sir, at the time your signature was purported
16	to have been made on August 26, 1963, do you recall
17	what Anthony Bersani's credit rating was in this area?
18	MR, KALL: I am sorry. I couldn't hear
19	that question.
20	(The Court Reported repeated the
21	question as above recorded.)
22	MR. GROSSMAN: And I am referring to
23	the signature on plaintiff's Exhibit 2.
24	MR. KALL: Your Honor, I am going to
05	object to that, your Honor, on the basis it is very

	-	(STEPAN - ABULTACC)
1		vague. I don't believe I understand the question
2		myself.
3		THE COURT: I cuppose what the inference
4		is
5		MR. GROSSMAN: Well, if the witness
6		understands it.
7		THE COURT: I will let him answer.
8	A	As related to us, I know it was shakey, as it related
9		to Auto Dynamics by whom I was being paid.
10	Q.	Do you recall at that time whether Mr. Bersani was able
11		to raise money in Syracuse?
12	A	I don't that. I assume that he didn't, but in any case
13		we were not given infusion of capital as we were sup-
14		posed to have been.
15	Q	Do you know if Browery Bersani or Lana Low had a very
16		good credit rating an Syracuse at that time, sir?
17	- A	I really don't know.
18		MR. GROSSMAN: I have no further
19		questions, your Honor.
20		THE COURT: Did Auto Dynamics Corporation
21		Auto Dynamics of Syracuse Incorporated, if you
22		know, own any machinery, fixtures and equipment
23		that was in the place?
24		THE WITNESS: I don't think so sir, no.
25		THE COURT: Do you know what this

	(Siepan - Redirect) 126
1	Ballas 51,745 as an asset listed under machinery,
2	fixtures and equipment, represents?
3	THE WF MESS: No, sir.
4	THE COULT: Do you enything about the
5	figures in this statement?
6	THE WITNESS: No, sir.
7	MR. KALL: I have no further questions
8	of this witness.
9	
10	THE WITNESS: These things were prepared
	by others and they were merely presented to me to
11	be signed, and that is the way the situation
12	worked.
13	THE COURT: Do you have any specific
14	recollection of how anyone of these three docu-
15	ments were presented to you, or by whom?
16	THE WITNESS: I really don't know, sir.
17	THE COURT: All right.
18	(Witness excused.)
19	MR. GROSSMAN: Your Honor, I call to
20	the stand Carl Guy.
21	
22	CARL F. GUY, called as a witness in
	behalf of the defendant, being first duly sworn,
23	was examined and testified as follows.
24	DIRECT EXAMINATION
25	BY MR. GROSSMAN:
1000	

1	Q	Will you state your full name, sir.
2	A	Carl F. Guy.
3	Q	And what is your present address, sir?
4	A	The office address is 1643 West Genesee Street,
5		Syracuse, New York.
6	Q	And your home address?
7	A	850 Fey Road, Syracuse.
8	Q	What is your occupation, sir?
9	A	Attorney.
10	Q	Now, sir, when did you begin any association with the
11		Midtown Car Center; do you recall?
12	A	Well, it was in the incubation period. I would say
13	o e	in the year '61-'62, along in there, and became familiar
14		with the concept. It was primarily because of one
15		client of mine who had an interest in it. It was well
16	6-8-3-11	known by Mr. Bersani, so I became familiar with it.
17	Q	Wes this client of yours a client in the Car Center?
18	A	No, this was before the operation began.
19	3	Now, sir, when did you become involved in Auto Dynamics
20		of Syracuse, Inc. and particularly in the Car Center?
21	A	Well, during, I would say, the first official business
22		that I had with the Corporation would be in the year
23		1963. I think I would have dealings with them I think
24		somewhat earlier than that.
95	Q	And what actually occurred in 1963? Do you recall or

		The state of the s
1		do you
2	A	In the year 1963 I got the corporate book, as I recall,
		for some reason of Auto Dynamics. Maybe that was & delivered letter to my office.
	Q	Do you recall who delivered it to you, sir?
	A	I don't. Maybe I better reverse the answer. I might
		have picked it up at Mr. Bersani's office or at the
		Car Center, but I don't recall.
	Q	Do you recall at whose request you received the docu-
		ments of Auto Dynamics?
	A	I think I had some discussions with Mr. Slepan and Mr.
		Bersani concerning some proposed use for the Corporation
		MR. GROSSMAN: Will you mark this for
		identification.
		(Envelope marked as defendant's Exhibit
		F for identification.)
	BY	MR. GROSSMAN:
	Q	Now, I hand you what has been marked for identification
		as defendant's Exhibit F and ask you if you recognize
		it, sir.
	A	I do.
	Q	And what is that, sir?
	A	This is one of my law firm envelopes.
	•	Does that helm you recollect the exact date in which

you might have been asked to do anything with regard

to Auto Dynamics?

2

Sometime around the first of May, apparently. It indicates in my own handwriting a note which says I

4

had a conference with some of the tenants.

5

MR. KALL: Made on what year?

6

THE WITNESS: 163. That is not on here

7

incidentally but that would be the year.

8

MR. KALL: That is all right.

9

THE WITNESS: It indicates that I had

10

a conference with the tenants, and one of my

11

clients or two tenants at that time as I recall.

12

BY MR. GROSSMAN:

13

Now, sir, what was the -- do you recall what you proposed to do on behalf of those tenants?

15

A As I recall, it was proposed that there be a new

16

corporate charter called Midtown Car Center Inc., which is what the name is on this file, and this Corporation

18

17

would undertake the overall management of the Car Center.

19

The idea being apparently or at least as I recall it,

there was a clause providing for this type of thing -

21

the management company of the Car Center that provided

22

facilities generally to all the tenants, things that

common service, and I believe even provided some other

24

that they could use in common, and I believe it talked about the possibility of obtaining, doing such things

1 as credit checks of the individual companies and that sort of thing. 2 Do you recall which person or persons requested that a 3 you set/such a corporation? 4 Well, my original --- I had some discussions with Mr. 5 A Bersani about it, and then on June 12, 1963, Mr. Slepan 6 7 requested that I charter the corporation immediately according to this note. 8 9 Is that in accord with your recollection, sir? Q 10 That is correct. 11 And did you so charter the corporation? I did. And as I think I recall, I incorporated it in 12 accordance with the law of the state of New York, at 13 14 that time the business corporate law which required 15 three separate incorporators, one of whom was myself, one my secretary and one, my insurance man in the front 16 17 office. 18 Did Mr. Slepan indicate that this corporation was to be Q formed on his own behalf, that he was to have control 19 over that corporation? 20 No, I don't believe so. A 21 22 Q Did he represent to you who was to be the controller 23 of that Corporation? Well, I dont' believe so. Not specifically. 24 A Were there certain terms suggested to you as to the Q 25

1 makeup of the Corporation? 2 A Just the general ones that I have told you about at 3 that time. Now I on't believe that I was instructed 4 to issue the stock or make any disposition of the stock 5 atthat time. Q I see. 6 7 If that is what you are driving at. 8 Q What was the next thing which transpired with regard to that proposed corporation? 9 10 A Well as I recall, and I am not sure about the sequence, but I think it was sometime in the fall. September or 11 12 October, one of my clients was a tenant and/that time 13 I believe I had changed the name of that corporation from Finley Motors, Syracuse, to Midtown Motors Limited 14 15 and then they were put out by some other name, and I 16 believe at that time they were running a repair service, 17 this is in a fashion which was similar I believe to what Auto Dynamics was doing. But they were not 18 19 working on Domestic Motors but were working on foreign 20 cars, and they desired to enter into some discussions 21 with Mr. Bersani as to taking over the Auto Dynamics, 22 I believe. Q Did they ask you to prepare any memo for them with 23 regard to that, sir? 24 Well we did. I think the way that developed was that 25

we had a meeting with Mr. Newcomb and Mr. Bersani and Mr. McComb I believe was still involved at that time, and subsequent to that meeting I prepared a memorandum as to what that was.

MR. GROSSMAN: May I have this marked? (Memorandum marked as defendant's Exhibit G for identification.)

## BY MR. GROSSMAN:

- Now I hand you what has been marked as defendant's Exhibit G and ask you whether or not you recognize that document.
- I do.
- Q And what is the document, sir?
  - It is my memorandum together with some attachments A . that were prepared from schedules given to me after the meeting.
  - Now, sir, were the terms in this memorandum terms Q that were thought up by you or were these items suggested by others?
  - They were the results of a conference between Mr. Bersani and Mr. Newcomb.

MR. KALL: I am sorry, Will you speak May I have the answer. up.

(The Court Reporter repeated the answer as above recorded.)

20

21

22

23

24. 25

MR. KALL: Thank you.

2

THE WITNESS: They don't represent any-

3

thing original on my part, no.

4

MR. GROSSMAN: I am going to offer

5

defendant's Exhibit G into evidence.

6

MR. KALL: I have no objection, your Honor.

7

THE COURT: Received.

8

(Defendant's Exhibit G for identification

9

received into evidence.)

10

## BY MR. GROSSMAN:

11

12

Mr. Newcomb, which resulted in this memorandum, what

Now, sir, from the discussions with Mr. Bersani and

13

was to occur to Auto Dynamics under their projections?

Well, my memory is a little bit hazy about that, but

15

both were to put up some money as I recall and Mr.

16

Newcomb or his corporation was going to take over the

17

operation of Auto Dynamics.

18

I see. And what was to occur to Auto Dynamics when the new corporation took over its furtions, sir?

19

A I think they were going to use the new management corporation, as I recall, that would simply take over

21

22

the Auto Dynamics and then they would put the money in

23

and Newcomb would be responsible for the running of repair service and Mr. Slepan was to be let go. That

24

is one of the conditions spelled out here.

1	Q	Is that condition spelled out in your memorandum, sir?
2	A	I believe it is.
3	Q	And can you refer to that condition in your memorandum?
4	A	Yes. Number 3 says, "Slepan off payroll at once."
5	Q	Do you recall the conditions or the circumstances
6		under which it was suggested that Mr. Slepan leave?
7	A	Well, it was part of the discussions in the sense that
8	V = 5	it was one of the requirements, as far as Mr. Newcomb
9		was concerned. As I recall, that is why it is inserted
10		there in that rather blunt way.
11	Q	Was Mr. Newcomb not too fond of Mr. Slepan at this time
12	A	Oh I don't believe it was necessarily a question of
13		fondness as it was the fact he was retting \$20,000 a
14		year out of that company.
15	Q	And Mr. Newcomb objected to that?
16	A	Apparently the company couldn't understand \$20,000 of
17	4	overhead. That is it.
18	Q	Was Mr. Slepan aware of the fact that he was to leave
19	(	under this new projection?
20	A	I am quite sure he was. Mr. Slepan was in some of
21		those discussions.
22	Q	Was Mr. Bersani in all of those discussion?
23	A	Yes.
24	9	Who was to put the money in that corporation besides
95		Mr. Newcomb?

\*\*\*

1	Α.	\$40,000 was to come from Mr. Bersani, according to	
2		these notes, and then an additional \$50,000 would be	
3		sought from outside investors.	
4	Q	Did you take any further steps subsequent to the	
5		preparation of this memorandum, sir?	
6	Ā	Well, the memorandum indicates that there was further	
7		discussions because I made notes on it. This apparently	
8		is my copy. I probably furnished other copies to the	
9		parties and this is my original copy, because it indicates	8
10 .		on the top October 17, which is seven days after the	
11	4	date of the memorandum, I had a conference with Mr.	
12		Newcomb and Mr. Bersani.	
13		THE COURT: October 17 of what year?	-
14		THE WITNESS: '63. A conference with	
15		Mr. Bersani and Mr. Newcomb discussing the rent	
16		of the proposed projects. That is all the note	
17		indicates. So there were further discussions	
18		that continued and I made notes all the way	
19		through here that indicate there was subsequent	
20	4	discussions.	
21	BY M	IR. GROSSMAN:	
22	Q	Sir, at that time were you given a corporate kit of	
23		Auto Dynamics?	
24	A	I believe I already have it. As I said, I believe I	
25		got the corporate kit earlier in the year.	

î	Q	Do you recall who owned the stock of Auto Dynamics
2		at that time, as indicated in the corporate kit?
3	A	I believe there were only two certificates ever issued
4		in that corporation, at least according to my recol-
5		lection, at the time that I had it.
6	Q	Do you recall whether they were the stock certificates
7	,	issued to Broncey Bersani and Lana Low?
8	A	I believe that is it. I believe there were just two
9		certificates.
10		THE COURT: Let me intempt. Were those
11		certificates issued at the time that you received
12		the kit or were they issued through your office?
13		THE WITNESS: I believe they were
14		already issued, your Honor.
15	BY D	GR. GROSSMAN:
16	Q	I hand you what has already been admitted as Exhibits
17		and E, and ask you if you recall whether these are
18		copies of those certificates that you have seen?
19	A	They appear to be, yes.
20	Q	Now, sir, subsequent to preparing this memorandum and
21		making notes, did you take any other steps in formulating
22		the new corporation?
23	A	Not with Auto Dynamics, because as I recall that was
24		covered by a memorandum as to what was to happen to
25		Auto Dynamic's stock, but the Midtown Car Center

1	1	
		Management Corporation stock was subsequently issued.
2	6	Was Midtown Car Center Management Corporation that was
3		to be the successor to Auto Dynamics?
4	A	It was to be a holding company, I believe, for all the
5		corporations in the Car Center.
6	Q	Including Auto Dynamics?
7	A	Auto Dynamics, MKC Tire. I believe they shifted the
8		MKC Tire at the same time, and I think those were the
9		two that are alluded to in the memorandum.
10	Q.	Do you recall who you issued the stock certificates to,
11		sir?
12	A	Well, I think the certificates were as I recall, it
13		was an initially a \$20,000 minimum capital corporation,
14		and then I must have made a I believe sometime
15		between the time, the spring that I incorporated the
16		corporation and then in October I changed the authorized
17		capital to some \$350,000, in accordance with the terms
18		of the memorandum, and then I issued the stock, or at
19		least it was issued by my office, probably separately.
20		It is not in accordance with the memorandum, but
21		separately.
22	Q	Do you recall who you issued that stock to?
23	A	No. We obtained a new stock certificate book.
24	Q	THE COURT: This is for the Midtown
25		Management Comparation?

4.

-	
1	THE WITNESS: Midtown Car Center
2	Management Corporation.
3	MR. GROSSMAN: May this be marked?
4	(Stock certificate book marked as
5	defendant's Exhibit H for identification)
6	THE WITNESS: I might explain that I
7	couldn't clear Midtown Car Center Incorporated,
8	that name wouldn't clear, so it cleared with the
9	Midtown Car Center Management Corporation.
10	BY MR. GROSSMAN:
11	Q I hand you what has been marked for identification as
12	Exhibit H and ask you what this document is, sir?
13	A Stock certificate book, a new stock certificate book
14	for Midtown Car Center Management Corporation.
15	Q And, sir, can you refresh your recollection by looking
16	in that Exhibit and indicating to whom stock was issued?
17	A Well first let me say the three original stock certifi-
18	cates are here, one to Jean Connor, one to Carl F. Gui,
19	number three to Herbert M. Crowley. They are the
20	original capital \$20,000 shares.
21	THE COURT: Are they endorsed or endorsed
22	in blank?
23	THE WITNESS: They are in blank.
24	THE COURT: Endorsed in blank?
25	THE WITNESS: They are not endorsed. The

1	are just in blank.
2	BY MR. GROSSMAN:
3	Q Were there any other subsequent shares of stock issued?
4	A Then the new stock certificate book, which has a capital
5	stock of \$350,000.00, certificate number one is not
6	issued, Certificate number two is not issued. Certi-
7	ficate number three is not issued. Certificate number
8	four was issued to Anthony R. Bersani. Five was
9	issued Anthony R. Bersani, six, seven.
10	Q And what dates were those issued by the way?
11	A There were all apparently issued the same day.
12	Q Which is?
13	A October 31.
14	Q 1963?
15	A 1963. Eight, nine, ten, eleven, twelve, thirteen,
16	fourteen, fifteen, sixteen, seventeen, eighteen, nineteen
17	twenty, twenty-one.
18	Q Those were all issued to Anthony R. Bersani?
19	A Twenty-two, twenty-three. Up to number twenty-three.
20	THE COURT: Four to twenty-three?
21	THE WITNESS: Yes. They wereissued in
22	varying amounts, apparently according to the book,
23	twenty, thirty shares, that type of thing, to Mr.
	Bersani.
24	THE COURT! Now what was are looking at
25	THE COURT: Now what you are looking at

1	now appears to me from here are the stubs; is that
2	correct?
3	THE WITNESS: That is correct, your Honor.
4	THE COURT: You are not looking at the
5	certificates?
6	THE WITNESS: No, the certificates are
7	apparently
8	THE COURT: delivered?
9	THE WITNESS: They were delivered and
10	signed for.
11	THE COURT: And who received them?
12	THE WITNESS: Anthony R. Bersani.
13	BY MR. GROSSMAN:
14	Q Do you recall for what purpose they were issued to
15	Mr. Bersani?
16	A No, I don't. Then there were some of the ones issued
	subsequent to that.
17	Q
18	Q Do you recall the circumstance of those issuances?
19	A John R. Cole, issued May 16, 1964, and that was 87 1/2
20	shares. And it was transferred from Mr. Bersani ap-
21	parently according to this.
22	Q I see. You say apparently. Why do you say that, sir?
23	A Because it shows "transferred A.R.B."
24,	Q Does that look like Mr. Bersani's initials there to
25	you, sir?

1 %	A That is my handwriting.
2	Q Oh, that is your handwriting.
3	THE COURT: Those are the records, that
4	is what that is.
5	THE WITNESS: These are the records of
6	the transfer of stock.
7	THE COURT: To show the source of the
8	original certificate.
9	MR. KALL: Your Honor, I object to this
10	whole line of questioning as being irrelevant.
11	We are dealing with payroll checks owed by Auto
12	Dynamics. I don't belive Midtown Car Center enter
13	into this picture at all.
14	MR. GROSSMAN: According to this
15	memorandum and the testimony of the witness, Midtown
16	Car Center Management Corporation was to take over
17	the functions of Auto Dynamics and in the process
18	dispose of or dispense with Mr. Slepan's services,
19	and I think that is very relevant to the case.
20	THE COURT: I think it is material.
21	Overruled. It goes to the question of control
22	by Mr. Bersani. If those are facts. I suppose
23	from which the Government claims it can be inferre
24	tet Mr. Bersani was closer to the control than he
25	indicates by his own testimony.
	U.S. COURT REPORTERS
	FEDERAL BUILDING

1	MR. KALL: Your Honor, there is no
2	testimony that he was the prime mover in the Car
3	Center per se.
4	THE COURT: Well, no, this is not the
5	Car Center. This is the management.
6	MR. KALL: It was to be management of
7	the entire Car Center.
8	THE COURT: Of three corporations, from
9	what I heard so far two is what I heard - the
10	Tire Company and the Auto Dynamics, and those are
11	the same companies with whom a financial state-
12	ment has been introduced.
13	MR. KALL: No, the financial statement
14	was for Auto Dynamics.
15	THE COURT: It seems to me I saw some-
16	thing in the nature of a consolidation of a state-
17	ment of some kind.
18	MR. GROSSMAN: Exhibit 3 I believe, your
19	Honor.
20	THE COURT: What?
21	MR. GROSSMAN: Exhibit 3 I believe,
22	your Honor, was the one with the Midtown Car Center
23	Management legend on 1t, which Mr. Kall offered into
24	evidence, which had Mr. Slepan's signature on it.
25	THE COURT: I think I saw it some place

11:

 along the line, Here is what I referred to.

Midtow for Center projection of revenue expenses

and net ome for year ending August 31, 1964,

shows a consolidated income for Auto Dynamics of

Syracuse, Incorporated, MKC Tire Corporation.

And other than this statement, I have not heard anything whatever and I suppose they are relevant and I will draw whatever inference I see fit from them. Overruled.

## BY MR. GROSSMAN:

- Now, sir, do you recall what was to happan to Mr.

  Slepan once he was off the payroll as projected by the participants to these discussions?
- They were making provisions for Mr. Slepan. He was considered to be a supernumerary, as it was, that they wanted to get rid of him, and he had a separate contract as I recall, that went to Mr. Bersani's other comparies which was not involved in the Car Center one, as I recall, so he was not going to be fired from Mr. Bersani's job. It was just that he was going to be fired from the Car Center job.
- Q Was there anyone else to be fired, personnel, as far as salary from Auto Dynamics went?
- A Yes, Petrucci, as I recall was getting too much and Tambs, but I don't believe he was even mentioned.

1	ନ	Did you put a notation in your memorandum regarding Mr.
2		Petrucci?
3	A	Yes. Petrucci was to be acted upon in regard to salary
4		or pay or whatever he was getting, and a man by the
5		name of Presenti was also there, and it was indicated
6		that he was to go also.
7	Q	Now, sir, what happened after October, 1963 with regard
8		to these new projects?
9	A	Well, I believe the negotiations account for some time,
10		and then subsequently broke down, so that Newcomb and
11		Mr. Bersani could not get together and complete the
12		transaction.
13	Q	Now, sir, what happened then to the corporation kit
14		that was given to you of Auto Dynamics?
15	A	I don't really recollect what happened to the corporate
16	- 1	kit of Auto Dynamics. I note that some of the shares
17		were not taken back from Mr. Bersani for some four or
18		five months up until about May.
19	Q	Mr. Bersani was still receiving shares of stock?
20	A	No, he turned his certificates in in May.
21		THE COURT: Did this involve also the
22		shares of stock from Mr. Cole?
23		THE WITNESS: I don't know what the end
24		would be. There were two or three of them that
25		received shares. Cole.
A 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1		1000000000000000000000000000000000000

1	THE COURT: Were these sales by Bersani?
2	THE WITNESS: I imagine so. John Cole
3	got 87 1/2 shares. Bertha Albert got 175. Harry
4	Kerr, 150 and Blank, 87 1/2.
5	BY MR. GROSSMAN:
6	Q And what was the last date indicated?
7	A May 15, 1964. That is in my handwriting.
8	THE COURT: And it was sometime after
9	that that you say that the transaction with
10	
10	Newcomb fell apart?
11	THE WITNESS: It was sometime between
12	October and May that the transaction fell apart
13	as it was with Mr. Newcomb.
14	THE COURT: That is, it fell apart as far as
15	Newcomb is concerned?
16 '	THE WITNESS: Yes.
17	THE COURT: There were other people
18	who became interested now, Cole and Albert.
19	THE WITNESS: That could be.
20	THE COURT: And that was about the middle
21	of May?
22	THE WITNESS: Yes.
23	BY MR. GROSSMAN:
24	Q Now, sir, did you subsequently conduct any business on
25	behalf of Auto Dynamics?
20	

1	A I don't believe so. I never consummated in other
2	words, the transaction that was proposed according to
3	my recollection was never consummated. Actually, it
4	was two transactions. One was the transfer of those
5	corporations to Midtown Car Cente Management Corporation
6.	and the other was to refinance and bring in other new
. 7	investors and neither was completed as far as I know.
8	Q I sec.
9	THE COURT: That is the initial project
10	or proposal was for Midtown Management Corporation
11	to become the owner of all of the outstanding
12	shares of Auto Dynamics among others?
13	THE WITNESS: Yes. I forget what the
14	memorandum shows, your Honor, but it did they
15	were to become the owner of the shares.
16	THE COURT: They were going to hold the
17	shares of those other companies?
18	THE WITNESS: Right. \$350,000 capital,
19	\$150,000 of which was 42 1/2% to each, and that
20	would have been apparently the two initial owners.
21	BY MR. GROSSMAN:
22	Q To each would be whom?
23	A Apparently, Newcomb and Bersani. Then the 7 1/2% from
24	each would be issued for \$50,000 to investors. That is
25	talking about the management corporation. Now, the

1		leases, we were to draw new leases for Auto Dynamics
2		and MKC Tire Corporation and the Muffler Corporation,
3		replace those with the current car service. It doesn't
4		specifically say, but I believe the Management Corpor-
5		ation was simply to take over the whole ownership.
6	Q	Now, sir, in your dealings with Mr. Bersani and Mr.
7		Slepan, representing Auto Dynamics, were these two
8		individuals on the same plane, as far as authority
9	<b>6</b> 7	went?
10	A	No not at all As T said T thinks
11	-	No, not at all. As I said, I think Mr. Slepan, as I
		recall, was hired separately in the inception of the
12		Car Center by one of Mr. Bersani's other companies,
13		and he was hired simply not to run the Car Center
14		primarily, as I recall, but to simply run the operation
15		of Auto Dynamics. Because as I recall again, he had
16		some expertees in the field. He had some specific
17		expertese in one of the operations.
18	Q	Now, who of the two acted as the superior, in your
19		discussionswith them, sir?
20	A	Well, Mr. Slepan was not the boss. Mr. Bersani was
21		the boss.
22	9	Was that very clear throughout your discussions with
23		them?
24		
24	A	Mr. Slepan never made any of the decisions, the

management decisions that I know of. He used to arg

1	
	with clients and things like that.
2	MR. GROSSMAN: I have further questions,
3	your Honor.
4	THE COURT: I think this is a good time
5	to take a short recess.
6	MR. KALL: Thank you, your Honor.
7	THE COURT: All right. Take a short
8	recess.
9	THE CLERK: Court stands for a short
10	recess.
11	(Whereupon at this point a short recess
12	was taken after which the trial was resumed.)
13	THE COURCE: All right.
14	MR. KALL: May I have these marked.
15	(Two papers marked as plaintiff's
16	Exhibits 5 and 6 for identification.)
17	CROSS EXAMINATION
18	BY MR. KALL:
19	Q Mr. Gui, did this proposition regarding Midtown Car
20	Center Management Corporation, was it ever implemented?
21	A No.
22	Q Never took effect; is that correct?
23	A Correct, as far as I lnow, it didn't.
24	THE COURT: That is the operation, what
25	you have told us.

	(Guy - Cross) 149
1	THE WITNESS: That's right.
2	THE COURT: The issuance and transfer
2	
3	of stock?
4	THE WITNESS: Transfers of the Corpora-
5	tions were never performed by me, if that is what
6	you are asking.
7	BY MR. KALL:
8	Q To your knowledge, was Auto Dynamics still in existence
9	in '64?
10	A Yes.
11	Q Did there come a time when you as attorney for this
12	Midtown Management Corporation applied for a loan
13	through the First Trust and Deposit Company?
14	A I don't recall.
15	Q I am going to show you plaintiff's Exhibit 6 and ask
16	you to glance at this and see if you have any knowledge
17	of this application to the Small Business Administration
18	through First Trust and Deposit? You will note that
19	the applications lists you as attorney.
20	A What is the date that it was filed, do you know?
21	Q I don't recall.
22	A In other words, this page here is a specimen copy;
23	is that right?
24	Q Yes.

25

And that was filled out by me as far as the name of the

1		Corporation was concerned. All right.
2	Q	Was this application ever submitted to the bank?
3	A	I don't know.
4	Q	Did you ever have any conversations with Mr. Lloyd
5		Wilson, the loan officer of the First Trust and Deposit
6	A	Yes.
7	Q	You did have conversations?
8	A	I believe so.
9	Q	Regarding this application?
10	A	I think what happened, I think I was asking about the
11		possibility of getting a Small Business Administration
12	÷.	loan.
13		THE COURT: Asked by whom?
14		THE WITNESS: I don't recall, your
15		Honor. This just refreshes my recollection as
16	1	to how I got the form, is really all. That is
17	11/	why I asked what the date was.
18		THE COURT: I didn't mean to interrupt
19		you.
20	t	THE WITNESS: I was just trying to
21		satisfy myself. I believe I had a conversation
22		with Mr. Bersani and probably Mr. Tambs, as I
23		recall, about the method whereby you applied to the
24		Small Business Administration, and I took it up

with a banker who would be familiar with it, and

1 that was Lloyd Wilson, because I believe he handled \$BA moneys with the First Trust, and I 2 believe he provided me with a form, and I filled 3 in the name of the Corporation on the specimen copy and turned it over to -- I don't know who I 5 turned it over to, and they went ahead and filled 6 it out. 7 BY MR. KALL: 8 9 When you filled out this application, did you indicate Q as to who were the owners of the stock? 10 I didn't fill that out. A 11 12 THE COURT: He says he didn't do it. 13 (Continuing) In other words, all I did was get him a A specimen copy, take it back to the office and said 14 "Fill this thing out the way you want to fill it out 15 so we qualify for a participation bank loan." All I 16 17 did was put in the name of the Corporation. That is 18 my writing. Is this your writing (indicating)? Q 19 20 A No sir, this is not. 21 Q I show you plaintiff's Exhibit 5 and ask you if this is 22 ' your writing? That is my writing. A 23

You prepared that document?

It is not a document. It is a note.

Q

A

24

1	Q You prepared that note?
2	A I made the note.
3	MR. KALL: Your Honor, I would like to
4	introduce Exhibit 5 in evidence.
5	MR. GROSSMAN: I have no objection.
6	THE COURT: All right. Received.
7	(Plaintiff's Exhibit #5 for identification
8	received in evidence.)
· 9	MR. KALL: Your Honor, I would like also
10	to introduce plaintiff's Exhibit 6, which as Mr.  dwdne  Grossman will be mere, are photostats of records
11	
12	which were produced on the basis of a subpoena
13	for an examination before trial, and I ask that they be introduced showing the records kept by the
14	bank in the normal course of business.
15	
16	THE COURT: Are you going to use that
17	6 (indicating)?
18	MR. KALL: No.
19	THE COURT: Then use #6 on this Exhibit.
20	MR. GROSSMAN: That was a mistake. It
21	was attached to another Exhibit which Mr. Kall is
22	going to offer right now, and it was erroneously
23	connected to it.
• 24	THE COURT: Exhibit 6 is what, the
25	application for a Small Business loan?

1	MR. KALL: These are various documents
2	subposness by us, Mr. Grossman and myself, from
3	First Trust and Deposit. This is a letter from
4	the Bank to the Internal Revenue Service, the
5	signature cards, corporate resolution application
6	from Small Business Administration and numerous
7	financial exhibits.
8	ND CDOCCMAN. No. 7
	MR. GROSSMAN: Your Honor, I will admit
9	to the authenticity of these documents and the
10	fact they were records kept in the ordinary course
11	of business. To the extent that there is any
12	hearsay that appears in these Bank records, I
13	would like to reserve an objection to.
14	THE COURT: What is the purpose of them?
15	What do they purport to be?
16	MR. KALL: They purport to be an
17	application to the First Trust and Deposit, your
18	Honor.
19	THE COURT: May I see them?
20	MR. KALL: Yes. (Hands documents to
21	the Court.)
22	THE COURT: I don't know what this
23	is supposed to be. Here is an applicant's state-
24	ment which appears to be unexecuted.
25	MR. GROSSMAN: Pardon, your Honor?

1 THE COURT: I say, here is an applicant's statement, which appears to be unexecuted. 2 MR. KALL: I submit, your Honor, that 3 for whatever worth it is, we have to indicate. THE COURT: To indicate what? MR. KALL: That the bank's records indicate that the shareholders for other than Mr. 7 Guy said these were listed in the corporate stock 8 book. 9 318,631 MR. GROSSMAN: On those grounds I object 10 because that is clear hearsay. 11 THE COURT: And t is not certified by anyone. That is the problem. I don't know 13 who made this up. If these are all facts, you 14 have to have somebody who can testify to them, 15 or you have some records -- I guess the best 16 records would be the records of the corporation. 17 MR. KALL: That is correct. 18 THE COURT: The stock books, the receipt 19 books, the corporate records. But here is a 20 corporation -- I will accept the corporate 21 resolution for depositing money, I mean the auth-22 orized depository, but I don't see how -- I don't 23 even know how this got into the bank. MR. KALL: These records were in the 25

.	
1	account file of the bank.
2	THE COURT: They produced them. There
3	is no question about it. You don't say so. But
4	here they don't appear to be executed.
5	MR. KALL: I realize that, your Honor.
6	THE COURT: What probative value have
7	they got?
8	MR. KALL: Well, based upon whatever
9	THE COURT: I will accept them for the
10	purpose of showing that these records were in the
11	bank.
12	MR. KALL: All right.
13	THE COURT: But not for the truth of the
14	statements contained therein.
15	MR. GROSSMAN: That is fine, your Honor.
16	MR. KALL: All right.
17	THE COURT: All right, with that
18	limitation they are received.
19	(Plaintiff's Exhibit #6 for identification
20	received into evidence.)
21	BY MR. KALL:
22	Q Mr. Gui, I show you plaintiff's Exhibit 5 and ask you
23	if you recall when you made out this memorandum.
24	A No, I do not.
25	Q And from reading this memorandum, if my arithmetic is

1	correct, it shows that 100% of the stock was to be
2	issued to various individuals, excluding Mr. Bersani;
3	is that correct?
4	A That looks like a proposed list. One hundred percent
5	of stock.
6	THE COURT: In what company?
7	THE WITNESS: Midtown Car Center
8	Management Corporation. It was apparently a
9	proposed list of shareholders. As a matter of
10	fact, Mr. Kall, I think Henry Kerr was actually
11	a shareholder. I believe he was.
12	MR. KALL: I don't know. I have no
13	further questions, your Honor.
14	THE COURT: Any redirect?
15	REDIRECT EXAMINATION
16	BY MR. GROSSMAN:
17	Q Sir, was this list made up to indicate to the banks
18	that these were the shareholders or were these for
19	some other purposes?
20	A I don't know what I made up the list for. I may have
21	simply copied down what somebody has said to me. It is
22	not unusual for me to do that. That he had a proposed
23	list of shareholders. It includes Leonard Bersani as
24	well as all these persons ander Anthony Prince.
25	Q Was Leonard Bersani, sir, involved also in making the

- 11	
1	application to the Small Business Administration for a
2	loan?
3	A Yes. I think he may have actually handled something
4	in connection with it. That is what that may be.
5	THE COURT: As I understand your
6	testimony, Mr. Gui, your only connection with the
7	application to the Small Business Administration
8	was to procure a specimen application form and to
9	fill in the corporate title at the top.
10	THE WITNESS: Which is the working shee
11	That is correct, your Honor. I didn't handle the
12	actual application.
13	RECROSS EXAMINATION -
14	BY MR. KALL:
15	Q Mr. Guy, were you to receive a fee if the Small
16	Buriness application was approved?
17	A I don't recall, Mr. Kall.
18	Q The bank papers indicate that you were to receive 2%
19	of any funds. Does that refresh your recollection?
20	A Not at all.
21	MR. GROSSMAN: I have no further
22	questions.
23	MR. KALL: No further questions, your
24	Honor.  THE COURT: Just a moment. May I see
25	THE COURT. Case is seen as

1	those Exhibits.
2	MR. KALL: Your Honor, Mr. Grossman and
3	I both recall that the Exhibit listing the share-
4	holders was furnished to us from the First Trust
5	and Deposit from their account files.
6	MR. GROSSMAN: I will stipulate as to
7	that, your Honor. That it is part of the bank
8	records.
9	THE COURT: It is received as a bank
10	record.
11	MR. GROSSMAN: Yes.
12	THE COURT: In the absence of some other
13	proof, but not as to proof of the facts stated
14	there. Anything further of Mr. Gui/?
15	MR. KALL: I have nothing.
16	MR. GROSSMAN: No.
17	THE COURT: Thank you, Mr. Gui.
18	THE WITNESS: Thank you, your Honor.
19	(Witness excused.)
20	MR. GROSSMAN: I would like to call at
21	this time John Hildebrand.
22	JOHN W. HILDEBRAND, called as a witness
23	in behalf of the defendant, being first duly sworn,
24	was examined and testified as follows.
25	DIRECT EXAMINATION

	-	
1	BY M	R. GROSSMAN:
2	ବ	Will you state your full name, sir.
3	A	My name is John W. Hildebrand.
4	Q	And what is your address, sir?
5	A	125 Goodrich Avenue, Syracuse.
6	Q	Is that your home address, sir?
7	A.	Yes.it is.
8	Q	And what is your present occupation, sir?
9	A	I am director of the Syracuse Urban Renewal Agency.
10	Q.	Now, sir, were you ever employed by the Auto Dynamics
- 11		Corporation?
12	A	Yes I was.
13	Q	And when did you come to Auto Dynamics?
14	A	About August 1963.
15	Q	What were you doing prior to that, sir?
16	A	I was with a consulting engineering firm in Syracuse,
17		O'Brien & Geer.
18	Q	How did you apply for the job at Auto Dynamics?
19	A	A friend of mine told me that he understood Mr. Bersani
26		might be looking for an accountant to work the Car
21		Center.
22	Q.	And what did you do after that?
23	A	Following that I called Mr. Bersani and made an appoint
24		ment to see him at his office in the Midtown Plaza, met
25		with him and was hired.

1	Q	At that meeting?
2	A	Following that meeting, yes.
3	Q	I see. Did Mr. Bersani tell you how much you would be
4		making?
5	A	Yes, he did.
6	Q	At that meeting?
7	A	\$10,000. Right.
. 8	Q	Now, sir, what position did you take with Auto Dynamics
9		as a result of this meeting with Mr. Bersani?
10	A	My title was comptroller.
11	Q	And what were your functions as comptroller?
12	A	As I recall, Mr. Bersani gave me four principal assign-
13		ments; 1, was to assist in bringing the accounting
14		records up to date; 2, was to develope a system of
15		periodic reports for Mr. Bersani's use; 3, was to set
16		up an accounts receivable system and 4, to develope
17		accounting and auditing proceedings for the Center.
18	Q	Now, sir, what kind of reporting system was this that you
19		were to set up for Mr. Bersani's use?
20		
	A	Well, there were primarily reports indicating in terms
21		of dollars the weekly volume of work in the Center, not
22		only Auto Dynamics, but MKC Tire, the Muffler Shop,
23		I think those were the three principal ones. And the
24		results, operating results each week, was to determine
25		how the business was progressing.
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1	Q	I see. Now all of the you were receiving a salary
2		from Auto Dynamics; is that correct?
3	A	That is correct.
4	8	New, sir, who got copies of those reports that you
5		made?
6	A	We kept one in the Auto Dynamics file and sent the
7		other copy to Mr. Bersani's office.
8	Q	Did you deliver those personally to Mr. Bersani?
9	A	They were usually sent over in the interoffice mail.
10	Q	And those were weekly reports you say?
11	A	We tried to do them weekly, yes.
12	Q	What was the difference between these reports and the
13		system that was there before?
14	A	The system that was there was the usual accounting
15		system which results in monthly reports, the overall
16		balance sheet, and a profit and loss statement without
17		dividing it up into the various units that made up the
18		company. Just a sort of a consolidated type of report
19		and only once a month.
20	Q	Did you or anyone in Auto Dynamics review these reports
21		with Mr. Bersani?
22	A	On occasion.
23	Q	You did?
24	A	Yes.
25	Q	Do you recall about how often you would review these

1		reports with him?
2	A	Well, I would say at least twice a month, perhaps
3		oftener.
4	Q	Were there any other persons present when you went
5		over these reports with him?
6	A	Sometimes, yes.
7	Q	Who might be present at those conferences?
8	A	Usually Mr. Slepan.
9	Q	Do you recall whether or not either of the two was in a
10		subordinate position when reviewing these reports as to
11		the operations of the various parts of the Car Center?
12	A	Well, Mr. Bersani asked the questions.
13	Q	And you and Mr. Slepan would give the answers?
14	A	As best we could, yes.
15	Q	In your overall dealings with the presons involved in
· 16		the Car Center, who to your mind was in overall charge
17		of what transpired atAuto Dynamics?
18	A	Well, there seemed to be two. I would say you had to
19		do business, Mr. Slepan operated Auto Dynamics, but
20		certainly behind the scenes was Mr. Bersani.
21	Q	Now, did that go as far as matters affecting Auto
22		Dynamics in particular rather than the entire Car
23		Center?
24	. A	Well, it seemed to relate primarily to Auto Dynamics.
25		That was the largest unit in the Car Center in terms
20		

of volume and the number of employees and the : mount

2		of work done. It also related to MKC Tire.
3	Q	I see. Was MKC Tire very closely related to Auto
4		Dynamics?
5	A	Separate companies but adjoining space; same Car Center.
6	. କ	Were there any similar or some officers, if you mecall?
7	A	Yes, there was an overlapping of two.
8	ବ	And who were those two?
9	A	My recollection is that Mr. Slepan was Vice-President
10		of MKC Tire and Tambs was Secretary-Treasurer.
11	Q	Now were these two corporations related to Mr. Bersani
12		in any manner, differently than the other entities
13		that were in the Car Center?
14	A	Well, yes, I would say they did. The other entities
15		in the Center were more in a position of merely being
16		tenants occupying space and paying a rental.
17		THE COURT: Mr. Hildebrand, Mr. Bersani,
18		if my recollection is correct, testified that there
19		were about 30 tenants in the overall project.
20		Would that be your judgment?
21		THE WITNESS: I didn't realize that ther
22		were that many.
23		THE COURT: I don't know. My recollecti
24		may be wrong. How many would you say?
25		THE WITNESS: There were quite a few.

1	THE COURT: How many would you say?
2	THE WITNESS: Ten or fifteen.
3	THE COURT: Did you make up monthly
4	reports on the Tire Company, Auto Dynamics and
5	you said one other company. What about the other,
. 6	did you make up monthly reports on them?
7	THE WITNESS: No. No.
8	THE COURT: Or weekly reports I should
9	say.
10	THE WITNESS: Neither, Neither.
11	MR. GROSSMAN: Could you repeat my
12	question and the part answer, if you would please?
13	(The Court Reporter repeated the last
	question by Mr. Grossman and the answer by the
14	witness.)
16	BY MR. GROSSMAN:
17	Q Was that your complete answer?
18	A Yes, it was.
19	Q Now, sir, were you aware of withholding taxes being
. 20	delinquent by the Auto Dynamics Corporation?
21	A Yes.
22	Q Now, how did you become aware of this, sir?
23	A I became aware of it in two ways, 1, the fact that
24	there were returns filed without remittances, and 2,
25	the several visits that were made to the Center by an

U.S. COURT REPORTERS FEDERAL BUILDING ALBANY, N. Y.

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1		agent of the IRS.
2	Q.	And what was his name; do you recall?
3	A	Mr. Thomas Connors.
4	Q	And did he come to see you, sir?
5	A	I don't know as he came to see me personally, but he
6		did stop in my office.
7	Q	Did he also see Mr. Slepan and Mr. Tambs?
8	A	If they happened to be around, yes.
9	Q	Did you satisfy the revenue officer with what he was
10		seeking or did you send him elsewhere?
11,	A	I wouldn't say I satisfied him exactly, no. I will
12		drop the answer right there.
13	Q	Did you refer him to anyone when he came to see you?
14	A	Well I am afraid I did. I suggested he see Mr. Bersani.
15	Q	Did Mr. Slepan send him elsewhere when he came to see
16		Mr. Slepan when you were in Mr. Slepan's presence?
17	A	Yes. Same suggestion.
18	Q	And was that the same for Mr. Tambs a creer?
19	A	I don't recall. More often than not Mr. Tambs wasn't
20		there when I was.
21	Q	I see. Now, do you recall whether or not Mr. Bersani
22		ever satisfied the delinquent withholding taxes during
23	11/4	the time you were with the Corporation?
24	A	Not to my knowledge.
25	Q	I see. Now, sir, do you recall in December of 1963
	II .	

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1		whether or not the Auto Dynamics Corporation or the
2		officers of that Corporation attempted to secure any
3		loan from a bank?
4	A	Yes I do.
5	Q	Do you recall how much? Did they actually secure such
6		a loan?
7	A	They secured yes, they did secure such a loan.
8	Q	And do you recall the face amount of that loan?
9	A	Twenty thousand.
10	Q	And do you recall why the officers were attempting
11		to secure such a loan?
12	A	Why?
13	Q	Yes.
14	. A'	It was to be plied to the withholding tax liability.
15	Q	Do you recall whether or not the proceeds of the loan
. 16		actually were applied to the withholding tax liability?
17	A	No they were not.
18	Q	Do you recall where any substantial amount of that loan
19		went, sir?
20	A	My recollection is that the proceeds of the loan were
21		deposited in the Auto Dynamics general checking account
22		in the Marine Midland Bank, and that shortly thereafter
23		Mr. Tambs Mr. Bersani requested the money.
24	Q	Do you recall whether Mr. Bersani got a substantial
25		amount of that?

	H	
1	A	Well I know he didn't get it all because some checks
2		had cleared against it by the next day or two. My
3		recollection is that perhaps \$17,000 of it.
4	Q	Were you in favor did you express an opinion as to
5		whether or not Mr. Tambs should clear that to Mr.
6		Bersani?
7	A	I had, nothing to say about it.
8	Q	Do you recall whether anyone else in the Corporation
9		office voiced any opinion as to whether or not that
10		money should be paid over to Mr. Bersani?
11	A	I don't recall.
12	ନ	Now, sir, do you recall whether or not when you came
13		with the Corporation, the Corporation was adequately
14		financed to satisfy the obligations that it incurred?
15	A	No. It was quite undercapitalized I would say.
16	Q	Did it usually have enough money to pay the payroll?
17	A	Barely, yes.
18	Q	Where did it generally get the money for paying the
19		payroll?
20	A	Well, a part from the operation itself and occasionally
21		from Mr. Bersani.
22	Q	I see. Mr. Bersani personally or one of his entities,
23	, , ,	sir?
24	A	I don't know where the funds came from.
25	Q	But you know it came from Mr. Bersani?

	A	Yes.
	Q	Do you recall who selected the creditors of the
		Corporation who would get paid from whatever available
		funds there were, sir?
	A	I didn't have too much to do with that. Mr. Tambs
		drew the checks and signed them. I know that he quite
		often discussed this matter with Mr. Bersani directly.
	Q	Now, did Mr. Tambs sign these checks on his own
		direction or was he under orders from anyone as to who
		would get paid?
	A	That wasn't in my province.
	<b>Q</b> .	I see. Now you said you know that Mr. Tambs discussed
		these matters with Mr. Bersani. Were Mr. Tambs and
		Mr. Bersani on an equal plane as far as their level of
		importance in Auto Dynamics?
	Α.	I wouldn't say any more than I was.
	Q	Was either one of them subordinate to the other one?
	A	Yes.
	ବ	And who was the superior there?
	A	Mr. Bersani.
	Q.	Now, sir, were Mr. Bersani and Mr. Slepan on an equal
		plane as to the management of Auto Dynamics' affairs
		or was one there also subordinate to another?
	A	Well again on day to day operating matters, Mr. Slepan
1	A	
ACCESSES.		

1 he took his orders from Mr. Bersani. 2 Q Now, sir, during your -- strike that. After you came to Auto Dynamics did you change the manner of making 3 the payroll? 4 5 A Yes. At the time I arrived the payroll was being 6 distributed in cash, not by envelopes. And receipts were signed for the envelope by each employee as he 7 received his weekly pay. I suggested that they ought 8 to have a payroll account and pay employees by check. 9 For two reasons. Principally, one, the fact that the 10 checks themselves then would automatically become a 11 receipt. And two, for security reasons. It meant then 12 that fairly large sums of cash wouldn't have to be kept 13 on the premises or brought by armored car. And this 14 account was actually established. 15 I see. Did you suggest at that time that either net Q 16 wages or gross wages go into the account? 17 18 A Gross wages. 19 I see. Did that actually occur? It did for a little bit. 20 21 Q I see. Then what happened, sir? 22 A Well, then the net payroll over say the first two or three deposits and there after what was actually 23

Do you recall whether any of those net payrolls came

deposited.

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1	from Mr. Bersani?
2	A Not specifically, but there were advances made after net
3	payrolls were being deposited which could very well
4	have included the net payroll.
5	Q Do you recall whether or not those advances from Mr.
6	Bersani and/or his related Corporations were advanced
7	to cover specific items or whether they were merely
8	arbitrary amounts sent over at some time?
9	A The only one that I was actually involved in was to
10	cover specific items.
11	Q Do you recall what items these were?
12	A No, only that they were to cover payroll and certain
13	accounts payable to regular suppliers of the Car Center
14	Q And so then was there an even amount of money or was
15	1t an exact total?
16	A Even amount.
17	THE COURT: When you say suppliers to
18	the Car Center, are you talking about the Car
19	Center as a whole?
20	THE WITNESS: Auto Dynamics, sir.
21	MR. GROSSMAN: I am sorry. I didn't
22	get the answer.
23	(The Court Reporter repeated the
24	answer as above recorded.)
25	BY MR. GROSSMAN:

1	Q	By even amount do you mean the amount that was owed
2		or by a round figure?
3	A	Round figure.
4	ବ	Now, sir, when did you leave Auto Dynamics?
5	A	About May of 1964.
6	Q	Do you recall the circumstances of your departure, sir?
7	A	Yes I do. It happened, it occurred on one saturday
8		morning at a meeting called at the Car Center offices,
9		Auto Dynamics offices, by Mr. Bersani, and we discussed
10		the matter of the operations of the Car Center, and it
11	*	was obvious that something had to be done to
12		THE COURT: When you say the "Car
13		Center," are you referring to?
14		THE WITNESS: I am sorry. I mean Auto
15		Dynamics, sir.
16		THE COURT: You see, we have been using
17		the term "Car Center" more or less to refer to the
18	46.	entire project.
19		THE WITNESS: Right. I understand. I
20		didn't mean to confuse the situation. We discusse
21		the operations of Auto Dynamics and it was quite
22		obvious something had to be done to cut back or
23		drastically prune the overhead, and one of the
24		most valuable decisions was made, and as a result of that conversation my position was terminated.

U.S. COURT REPORTERS
FEDERAL BUILDING

		(Hildebrand - Direct) 172
1	BY M	MR. GROSSMAN:
2	Q,	I see. And was this by Mr. Bersani.
3	A	Yes.
4	Q	Did you question his authority to terminate your
5		employment?
6	A	No.
7	Q	Now, do you recall whether at that time Mr. Slepan was
8		still working for Auto Dynamics?
9	A	I think he was, well, physically present, but I don't
10		believe at that time he was any longer on the payroll.
11	૨	You mean he was physically present in Syracuse?
12	A	Yes, sort of winding up his affairs.
13	Q	I see. But he was taken off the payroll?
14	A	Yes.
15	Q.	Do you recall under what circumstances?
16	A	Yes I do. They were quite similar to mine.
17	Q	He was requested by Mr. Bersani to leave?
18	A	Yes.
19	Q	Do you recall at that time whether Mr. Petrucci was
20		still working for Auto Dynamics?
21	A	No he was not.
22	ନ	And do you recall under circumstances he left?
23	Α	Under the same circumstances as my own.

Now, sir, when Mr. Slepan was taken off the Auto
Dynamic payroll, who was put in to act as the leading

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1		officer of the Corporation?
2	A	Mr. McPherson.
3	Q	Was that the same McPherson that had been with MKC
4		Tire CompanY?
5	A	Yes.
6	Q	And what did he do with his role in the Tire Company?
7	A	I don't know.
8	Q	Now, sir, at the time that you were taken off the Auto
9		Dynamics payroll, was Mr. Bersani still in his position
10		in Primex Equities?
11	A	I don't really know, sir.
12		MR. GROSSMAN: I have no further
13	pin .	questions, your Honor.
14		CROSS EXAMINATION
15	BY M	IR. KALL:
16	Q	Mr. Hildebrand, just a few questions. When you were
17		hired, were you also interviewed by Mr. Slepan?
18	A	No. The morning I reported for work Mr. Slepan and
19		Mr. Tambs were called to Mr. Bersani's office in Mid-
20		town Plaza, and I was introduced to them at that time.
21		That was my first recollection of meeting Mr. Slepan.
22	Q	These weekly reports that you said you made out, did
23		Mr. Slepan and Mr. Tambs also see a copy of those reports?
24	A	I am sure they did. We had copies in our file because
25		these were cummulative reports and one was built upon

1		the other.
2	Q	You said that Mr. Connors wanted some payroll taxes
3		paid and you would send him to see Mr. Bersani; is
4		that correct?
5	A	I didn't send him to see Mr. Bersani. I suggested he
6		might see him, rather.
7	Q	Do you mcall when the first time was you suggested
8		that he go see Mr. Bersani?
9	A	Some time prior to the first of the year.
10	Q	What year?
11	A	December of '63.
12	Q	I am sorry. I can't hear you.
13	A	December of '63, probably as best I can recall.
14	Q	When did you start to work for Auto Dynamics?
.15	A	August.
16	9	*63?
17	A	Yes.
18	Q	Do you recall or know who prepared the payroll reports
19		for the third quarter of '63?
20	A	They were prepared by one of the bookkeeping staff.
21	Q	Do you recall who paid these payroll reports?
22	A	Who what?
23	Q	Who paid this report the amount of money that was
	1.	due on this report?
24	A	I believe it was Auto Dynamics.
25		

	-	(112240514114 - 01005)
· 1	વ	Wasn't it a fact, sir, that Mr. Bersani advanced funds
2		to Auto Dynamics to pay this quarterly report?
3	А	I don't really recall.
- 4	Q	Wasn't it a fact, sir, that the moneys that were
5		borrowed strike that. The payroll withholding and
6		FICA that were due for the third quarter of '63, when
7		was that report to be filed?
8/	A	My recollection is it was due 30 days after the end
(19)		of the quarter.
8. 10	Q	In other words, sir it would be October 31st?
A) n	A	October 31st.
- 11/12	Q	Isn't that correct? Isn't it a fact that in December
13		1963 the fourth quarter of '63 would not yet have been
. 14		due?
15	A	True.
16	Q	And isn't it a fact, sir, that the loan that was
17		obtained of \$20,000.00, the \$20,000 loan was to reimburs
18	( and the second	to Mr. Bersani for the funds which he advanced Auto
19	. 10	Dynamics to pay the third quarter of '63?
20	A	I don't recall.
21	Q	I am sorry, I couldn't hear you.
22	A	I said "I don't recall."
23	Q	Could it have been?
24	A	It could have.
	8	Did Mr. Bersani have any control over the day to day
25	1	

(Hildebrand - Cross)

(COLLIOIS - CIOSS)

1		operations of the business?
2	A	I assumed he did. He was over there quite often.
3	c.	How often is quite often? Once a week? Once a month?
4	A	Once a week, probably.
5	Q	Once a week probably. Did he make any of the deposits?
6	A	What is that?
7	Q	Did he make any of the deposits?
8	A	I don't believe so.
9	Q	Prepare any of the checks?
10	A	Actually write them out?
11	Q	Or sign them or examine the checks?
12	A	I don't know about examining them, but he didn't sign
13		any that I was aware of.
14	Q.	To your knowledge was any creditor preferred over
15		another creditor?
16	A	Not to my knowledge. I was not that closely related
17		to it, so not to my knowledge.
18	Q	Am I correct in stating
19		THE COURT: By "referred" do you mean
20		some paid and some weren't?
21		MR. KALI: Yes.
22		MR. GROSSMAN: Well your Honor, I think
23		it is the same kind of a question. I don't think
24		the witness understands. And I think Mr. Kall is
25		asking for a legal conclusion.
NAME OF TAXABLE PARTY OF TAXABLE PARTY.		

1	THE COURT: Sustained. If that is what
2	you are getting at, is a legal preference.
3	MR, KALL: I am not asking for a
4	legal preference, I am asking if in reality
5	THE COURT: Well, if some paid and some
.6	weren't, there was a preference of a kind.
7	MR. KALL: That is correct. And the
8.	witness has already testified to that fact.
9	THE COURT: But a legal preference, I
10	don't know. They were selecting, apparently the
11	testimony is that certain creditors were selected
12	for payments and certain others were not paid.
13	MR. KALL: All right.
14	BY MR. KALL:
15	Q What was, if you know, the liability position of Auto
16	Dynamics in say October, November or December 1963?
17	A Liability position?
18	Q Yes. Did Auto Dynamics owe a lot of money?
19	A My recollection is that they did.
20	Q They did. Have you had any idea as to the extent of
21	the liability?
22	A No I do not.
23	Q Do you have any idea as to the strike that. You
24	said you continued on until about April 1964; is that
25	correct?

1	A	May.
2	ಇ	May of '64. Did the financial position of Auto
. 3		Dynamics in relation to liabilities change from the
4		October-November of 1963 until you left in 1964?
. 5	Α.	Yes. It got worse.
6	Q	Were there more bills being paid I am sorry. Were
7		there more bills paid when you left than in the Fall
8		of 63?
9	A	You mean dollar amount?
10	Q	Dollar amount or individual number dollar amount.
11	A	Probably more.
12	Q	Do you have an idea of how much more?
13		
	A	No sir.
14	Q	To your knowledge
15		MR. GROSSMAN: May I have that answer?
16		(The Court Reporter repeated the
17		answer as above recorded.)
18	BY N	R. KALL:
19	Q	Did Auto Dynamics to your knowledge ever pay any rent
20		to Mr. Bersani or Primex Equities?
21	A	I don't recall that.
22	Q	What?
23	A	I don't recall.
24	Q	Do you have any knowledge that any rent was paid?
25	A	I don't.

1	<b>Q</b>	Had you ever seen the lease?
2	A	I am sure I must have.
3	ବ	Did you have any idea as to the amount of rent that
4		was required to be paid?
5	A	I don't any longer have it.
6	Q	Did you at the time?
7 :	A	I probably did at the time.
8	Q	Did you prepare financial statements for the Auto
9		Dynamics of Syracuse?
10	A	The weekly reports, yes.
11	Q,	Did you make an income and expense summary for each
		week?
12		
13	A	No.
14	Q	Did you accrue any rent or show any rent payable on
15		these reports?
16	A	I don't recall if I did.
17		
18	Q	Did Mr. Bersani ever relate to you in words or substance why
		the reason/you were engaged to work for Auto Dynamics?
19	A	Yes. I think I point that out in one of the first
20	1 1	questions I answered. What my assignments were and
21		duties at the Car Center.
22	Q	Did he express any concern to you over Primex's failure
23		to receive rents?
24	A	Not that I recall.
25	Q	He never expressed to you the point that he was a con-

1	$\cdot$	cerned landlord?
2	A	I was not involved in that part of it.
3	વ	Did he ever state to you or do you know the amount of
4		money which Mr. Bersani or his entities advanced to
5		Auto Dynamics?
6	A	I was aware of it at the time, but I don't recall now
7.		how much it was.
8	Q	Was it in the neighborhood of a Hundred Thousand?
9	A	It could have been.
10	Q.	I will show you a piece of typewritten paper which
11		shows dates. It shows loans and advances Auto
12	- 1	Dynamics, and I ask you if you have ever seen this
13		before?
14	A	I don't recall seeing this.
15	Q	Did you prepare this?
16	A	I don't recall that. It is conceivable, but I don't
17		recollect it.
18		THE COURT: You said you don't recall
19		seeing it before?
20		THE WITNESS: I don't recall seeing
21		that particular report, no.
22	BY M	R. KALL:
23	Q	Were you ever asked by Mr. Bersani or anyone to prepare
24		a recapitulation of sums advanced to Auto Dynamics?
25	A	My recollection is that Mr. Tambs did that.

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Q Did this?

A I did that necessarily, but there was no recapitulations that might have been prepared.

MR. KALL: All right. I have no further questions, your Honor.

REDIRECT EXAMINATION

## BY MR. KALL:

- In reference to one of Mr. Kall's suggestions you agreed that withholding taxes were due a month after the end of the quarter. Do you recall whether or not that is a requirement without regard to withholding taxes or whether or not they might be due earlier than the end of the quarter?
- A Well, it depends on the amount. They are due earlier than that, yes, if the amounts deducted by the party exceed a certain amount, they are due in the form of deposits to a withholding tax account at the time the payroll is distributed or drawn. If the amount exceeds, and I don't recollect exactly what that amount is, I think it is a Hundred Dollars or some small amount.
- And wasn't it your understanding that you are required to maintain the withholding as a trust fund for the Government currently and not wait until the end of the quarter?
- A Yes.

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1	ନ	So that you strike that. With that in mind can you
2		make any conclusive statement abou' why the \$20,000
3		loan was secured by Auto Dynamics?
4	A	Why it was secured?
5	Q	Yes.
6		
	A	It was secured primarily to deposit so that we could
7		show depository receipts for the four-quarter reports,
8		as I recollect, as required to bring the amount up to
9		the point where we could then secure depository receipts
10		which would then be filed with the return.
11		T don't want you to
11	Q	Are you just speculating now? I don't want you to.
12	A	No, I am not speculating.
13		MR. GROSSMAN: I have no further
14		questions.
15		MR. KALL: I have no further questions,
16		your Honor.
•		THE COURT: Just a moment Mr. Hildebrand.
17		THE WITNESS: Yes.
18		
19		THE COURT: Now, when you were hired did
20		you have a place to work?
21		THE WITNESS: Yes.
22		THE COURT: Where was your place of work?
23		Where you actually reported to work?
24		THE WITNESS: I was housed in the New
25		York Central Terminal building.

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1 .	THE COURT: That is in the Center there?
	THE WITNESS: Yes.
2	
3	THE COURT: Was that within the premises
4	of the Auto Dynamics? Was it their office, the
5	Auto Dynamics office or someone else's office; do
6	you know?
7	THE WITNESS: Well, I don't really
8	recall. I think it was Auto Dynamics, at least
9	that is where I work i.
10	THE COURT: That is where you did your
	work. And is that where you did all your work?
11	
12	THE WITNESS: All except for the last
13	month or two. We were moved out of the terminal
14	building into one of the nearby boice operations
15	where I had an office I think sometime after the
16	first of the year 64.
17	THE COURT: And where was this? Was
18	that in the Auto Dynamics office?
19	THE WITNESS: yes.
20	THE COURT: As distinguished, I am
21	distinguishing it between that and the Center, in
22	a building across the street.
23	THE WITNESS: It was in that new office.
24	THE COURT: All right. Anything further
25	MR. GROSSMAN: No further questions of

1	this witness.
2	MR. KALL: No further questions.
3	THE COURT: All right. Thank you. You
4	T are excused.
5	MR. KALL: Does Your Honor plan to
6	continue further tonight?
7	MR. GROSSMAN: Your Honor, I have one
8	witness that will take five minutes, hopefully,
9	and perhaps five more minutes on reading something
10	into the record.
11	THE COURT: And then the evidence will
12	be in?
13	MR. GROSSMAN: I believe so, Your Honor.
14	THE COURT: All right. I will stay with
15	you.
16	MR. GROSSMAN: Okay. Mr. Thomas Connors
17	please take the stand.
18	THO AS T. CONNOPS, called as a witness
19	in behalf of the defendant, being first duly sworn,
20	was examined and testified as follows:
21	
22	THE COURT: Is it anticipated that there
23	will be any rebuttal?
24	MR. KALL: Not at this time, Your Honor.
25	DIRECT EXAMINATION BY MR. GROSSMAN:
	Q Could you state your full name, sir?

1	A	Thomas T. Connors.
2	ନ	And what is your address, sir?
3	A	West Lake Road, Skaneatelas.
4	Q	And what is your present occupation?
5	A	At present I am retired. I formerly was employed by
6		the Internal Revenue Service.
7	Q	And what was your position with the Internal Revenue
8		Service?
9	A	Revenue officer.
10	Q	When did you come in contact with Auto Dynamics?
11	A	I came in contact with Auto Dynamics prior to these
12		quarters in question. The Corporation had filed
13		quarterly reports, but they were constantly filing
14		them without funds. Therefore, when the delinquent
15		account came out, it was my job to go and secure payment
16		of those funds.
17	Q	I see. Did you then visit Auto Dynamics in order to
18		secure payment?
19	A	Pardon?
20		MR. GROSSMAN: Will you read that?
21	2000 100 100 10	(The Court Reporter repeated the
22		question as above recorded.)
23		THE WITNESS: Yes.
24	BY N	MR. GROSSMAN:
25	Q	Who did you go to see in Auto Dynamics, sir?

1	A	I called on Mr. Tambs on some occasions. I also
2		called on Mr. Hildebrand and then I called on Mr.
3		Bersani.
4	ବ	yourself I see. Now did you just restrict/to these people or
5		was there another method in seeing them?
6	A	Well, I originally went to Auto Dynamics because that
7		is the one that the tax accounts was against. But I
8		found I could not get any real satisfaction there
9	. 2	because no one had any real authority to issue any check
10	Q	I see. When you say "no one there" are you speaking
11		now of Mr. Slepan and Mr. Tambs?
12	A	That is correct.
13	Q	Did they refer you to anyone?
14	A	They would always have to clear it with Mr. Bersani.
15		Mr. Tambs could issue a check, but he always had to clear it.
17	Q	Is that why you went to Mr. Bersani?
18	A	Yes.
19	Q	In subsequent visits did you go to see Mr. Slepan
20		and Mr. Tambs agair or did you go to Mr. Bersani?
21	A	Very often Mr. Bersani was out of town and I would stop
22		over and advise them, I did talk of the tax account that
23		was due and possibly, and hope that they would be able
24		to advise Mr. Bersani and acquire a check by my next
25		visit.

1	Q	And did Mr. Bersani ever pay you the withholding that
2		was due from the Corporation?
3	A	Yes.
4	Q	And how would he pay that to you?
5	A	He had no right to sign checks for the Corporation,
6		no, but sometimes I would stop at his office and there
7		would be a check for me.
8	ૡ	From the Corporation or one of Bersani's Corporations,
9		if you can recall?
10	A	I recell that maybe yes, this is possible, but some
11		of them were paid from other Corporations.
12	Q	Now, sir, would you ever have a conference in which
13		Mr. Bersani and the officers of Auto Dynamics were
14		involved at the same time?
15	A	Yes, on one or two occasions we all met.
16	ୟ:	What were the relative positions of the persons in the
17		conferences?
18		THE COURT: Who were at these
19		conferences. And where were they held and when?
20		THE WITNESS: I recall at one time when
21		I was there at Mr. Bersani's office, and we went
22		over to Auto Dynamics, which is I think a couple
23		of blocks away, and we talked with Mr. Slepan and
24		Mr
25		THE COURT: When you say "we" you are

1	referring to whom?
2	THE WITNESS: Mr. Bersani and I.
3	BY MR. GROSSMAN:
4	Q I see. And at that particular conference were Mr.
5	Slepan and Mr. Bersani on an equal level as to apparent
6	authority?
7	A MR. KALL: Your honor, I believe this
8	calls for a conclusion.
9	THE COURT: Sustained.
10	BY MR. GROSSMAN:
11	Q Well, did either Mr. Bersani or Mr. Slepan act as the
12	other was a subordinate of his?
13	MR. KALL: Same objection.
14	A Yes. THE COURT: Sustained. Tell us what
15	happened.
16	BY MR. GROSSMAN:
17	Q Well, what happened at the conference, to the best of
18	your recollection?
19	A Mr. Slepan and I and Mr. Bersani met and we discussed
20	the trouble that they were in, and Mr. Bersani was the
21	one who was going to try to work out some solution to
22	the problem.
23	Q Di he indicate to you when you say "some solution"
24	did he indicate to you that he would make payment?
25	A He would attempt to secure funds.

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1	ନ୍	Did Mr. Slepan ever indicate that he would take charge
2		of securing the funds?
3	Α	No.
4	Q	Did Mr. Bersani ever indicate to you that there were
5		other creditors of the Corporation who were also seeking
6		to be paid?
7	A	Yes. And I was aware that there were other creditors of
8		the Corporation, but I didn't know whether I tried
9		to make it a point that our taxes were the ones that
10		were due first. I don't know whether the others were
11		paid first or not.
12		MR. GROSSMAN: I see. I have no further
13		questions, . your Honor.
14		CROSS EXAMINATION
15	BY M	IR. KALL:
16	Q	Just a few questions, Mr. Connors. You said that you
17		were awars that the Corporation had other creditors.
18	A	Creditors?
19	Q	Other creditors; is that correct?
20 .	A	Right.
21	Q	And how did you arrive at this conclusion?
22	A	Well, when I would go over there I would make a demand
23		for payment. There was a lot of confusion, he heating
24		bill and like that. They were expenses that they had
		to meet.
25	1	

1	Q	And were you usually successful in obtaining funds
2		when you went there?
3	Α.	The majority of cases I would get paid, yes, but it
4		was a case of always complying with the regulations.
5		I always had to wait until the return was filed without
6		funds. Then this bill would come to me and I would ente
7		into the ricture for the collection of the bill. And
8		there were times when I would go over and Mr. Bersani
9		did tell me "in another week he would be able to have
		the funds for me."
10		
11	Q	Were you still on this case in 1964?
12	A	I can't recollect on that '64, no. I might say that I
13		might not have been.
14	Q	When you concluded your duties had all the taxes been
15		paid up until the time correction had the taxes
16		which you were required to collect been paid?
17	A	When I turned the case over to Mr. Montrose, no, they
18		had not.
19	Q	Do you recall what quarters were outstanding?
20	A	No, I don't.
21		MR. KALL: I have no further questions,
22		your Honor.
23		MR. GROSSMAN: I have no further
24		questions of the witness, your Honor.
		THE COURT: You are excused.
25		

## (Witness excused.)

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MR. GROSSMAN: Now your Honor, I would like to read into the record part of Mr. Bersani's deposition in the case, with regard to the question of who owned the assets of Auto Dynamics, of which there was some question raised, and I like to read from page 41, and this is the deposition that was taken on August 17, 1970, the question starting on line 4:

- Q "Now, sir, I take it the assets of the operations of the dynamometer company were not owned by the Corporation, Auto Dynamics, is that correct?
- It took me a long time to learn to say dynamometer too. They weren't, they were owned by Primex.
- Including the dynamometer? Q
- To answer your question, I think everything in that particular stall was bought and paid for by Primex Equities, and that we had a lease and the lease called for that, that it would be fully equipped -- am I right on that?

MR. KALL: Yes.

BY MR. GROSSMAN:

Q I see. Now were any of these assets contributed to Auto Dynamics of Syracuse or were they still owned by Primex throughtout this entire period which we have in controversy now?

		191
1	А	They were always owned by Primex.
2	Q	Now I take it was there a written lease that
3		was entered into?
4	A	Yes there was.
5	ନ	So I take it, then, the one asset that you know of
6		that Auto Dynamics of Syracuse did own was the
7		interest in the lease as lessee; is that correct,
. 8		sir?
9	A	Yes, plus they may have bought the small tools
10		and things, I am not sure about that."
11		That concludes that from the deposition,
12		your Honor.
13	in the same	We attempted to subpoena Mr. Tambs for
14		this trial and unfortunately he was unable to be
15		served. He is apparently away on vacation and
16		will not be back, and I would like to read a
17		portion of his deposition into evidence at this
18		point as a witness who is unavailable and outside
		of the jurisdiction.
19		
20		MR. KALL: Your Honor, I object to that
21		on the basis I would have no opportunity to cross
22		examine Mr. Tambs.
23		THE COURT: Did you have notice of the
24		taking of this deposition?
25		MR. KALL: Yes.

1	MR. GROSSMAN: He was present at the
2	deposition.
3	THE COURT: Where does the witness live?
4	More than a hundred miles from the place of holding
5	court?
6	MR. GROSSMAN: I believe he is away. The
7	marshal was unable to locate him.
8	THE COURT: Where does he live?
9	MR. KALL: Chatagay?
10	THE COURT: Chatagay? He is subject to
11	subpoena of this Court. If there is an objection
12	to reading the testimony, I will adjourn it so
13	that you can get his testimony.
14	MR. KALL: Let me ask, what testimony
15	were you going to read?
16	MR. GROSSMAN: I have a few places in
17	here.
18	Your Honor, I would if I may talk
19	with Mr. Kall, I may possibly dispense with Mr.
20	Tambés testimony.
21	THE COURT: You need not dispense with
22	anything. If there is proof available, I want
23	it presented, documentary or otherwise. If this
24	witness is in Chatagay, what I would suggest is
25	that you show counsel the parts of the deposition

1	that you are referring to, and there may not be	
2	any objection to it. If there is, there is no	
3	jury and I can recess without any arm, and we can	
4	get him or anybody else that you need.	
5	MR. GROSSMAN: Well your Honor, I will	
6	show Mr. Kall the testimony and see whather or	
7	not there is any objection.	
8	(Discussion fell between counsel off	
9	the record.)	
10	MR. GROSSMAN: Okay your Honor. Mr. Kall	
11	has no objection to my reading the portions.	100
12	THE COURT: All right. Read them into	
13	the record.	
14	MR. GROSSMAN: I am going to start with	
15	THE COURT: You have a copy of the	
16	deposition?	414
17	MR. KALL: Yes, I have.	*
18	THE COURT: All right. Give the pages	
19	MR. GROSSMAN: All right. Page 110,	
20	your Honor. And this is a deposition of Mr.	
21	Aubrey Tambs taken on July 9, 1970. Page 110, and	
22	starting on line 9:	
23	Q "Let me rephrase this. I take it since you	
24	were in charge of the payroll and other record	
25	keeping of the Corporation that you were aware from	

1 '			4h. h
0			the beginning as to the Corporation being
2			delinquent in paying its withholding taxes.
. 3		A	Yes.
4		Q	Whenever that occurred, you were aware of it?
. 5		A	Oh, yes, because we were supposed to get
6	,		around a quarter of a million dollars to
7			start that Corporation off. You realize we
8			started out with a complement of over 80 men
9			with no business at all, and naturally they
10	•		figured on losing money from the beginning
11			until it got on its feet. Well, this
12			quarter of a million dollars tot we were
13			supposed to get never appeared.
14		Q	Well, now
15		A	(Interrupting) Out of that, of course, we.
16			were going to pay the withholding taxes and
17		• Termin	so forth.
18	English to the a	Q	Where were you supposed to receive that
19			quarter of million dollars from?
20	٠	A	Mr. Bersani was I understand was going to
21			get it, provided
22		Q.	Advance that amount to you?
. 23		A	Yes.
24		Q	Now, sir, did Mr. Bersani and some of his
25	***		entities advance money to you at periods of

1	time, that is, to Auto Dynamics?	
2	A Yes.	
3	Q Do you recall exactly how much was advanced	
4	to you?	
5	A No, I do not.	
6	Q Now, sir, who did you meet with in Auto	
7	Dynamics or outside of Auto Dynamics to	
8	determine to whom to make checks payable to	
9	as part of your activity of writing checks?	
10	A . Well, of course we had to make the payroll	
11	checks. That was number one on the agenda.	***
12	If there was any money left over : would say	
13	Mr. Bersani or the officers decided who was	:31
14	to be paid. That's all there was to it."	
15	That is the quotations on that part, your	
16	Honor. Now I am going to page 136 of that	
17	deposition at line 21:	
18	"Q "Sir, who set the salary that you were paid?	
	A Mr. Bersani.	
19	Q Was it the same salary that you had been paid	
21	before you went with Auto Dynamics of Syracuse	
22	while you were working  A (Interrupting) I think I got a slight raise.	
23	A (Interrupting) I think I got a slight raise.  I was getting \$135.00.	
24	Q With Bersani Construction?	
25		

- 1		
1	A Ri	ght.
2	Q Tr	nen when you went to Auto Dynamics you got
3	а	raise?
4	. A R	lght.
5	Q D	id Mr. Bersani indicate to you that that
6	s	alary would continue for any length of time?
7	AI	don't understand what you mean.
8		ell now, did he indicate to you that you
9	W	ould continue receiving \$160.00 per week for
10	a	ny set period of time?
11	A N	o, just that it was related related to me
12	t t	hat I was going to get \$160.00 a wak over
13	t	here, and that is as far as I knew. I
14	f	igured I was going to get \$160.00 for each
15	,	seek that I worked. Nobody said anything about
16		a raise. Nobody said anything about getting
17	,	less,"
18		Now the last part, your Honor, is on
19	page	139, line 17. I am sorry. It is line 18.
20		Now, sir, up until the dem' 39 up until
21		the Corporation went out of business in what
22		you stated was December of 1964, did the
23		Corporation continue to pay salaries to the
24		employees?
25	A	Up until the time it went out?

1	Q Yes.
2	A Oh yes.
3	Q It paid the salaries and ages, I take it,
4	up until the end?
5	A Yes."
6	And that concludes the testimony, your
7	Honor, and that also concludes the Government's
8	case, your Honor.
9	THE COURT: Testimony of the Government
10	1s closed. Any rebuttal?
11	MR. KALL: No rebuttal.
12	THE COURT: Testimony is closed.
13	MR. KALL: I would like to make a motion
14	at this time, your Honor, that the counterclaim
15	of the U. S. Government be dismissed on the
16,	condition that there was no proof that Mr. Bersani
17	wilfully attempted to prevent the collection or the
18	payment of the taxes. There has been no testimony
19	or insufficient proof showing Mr. Bersani had
20	complete control over the records; there was no
21	showing that the funds which were required to be
22	paid to the Government for use for other operations
23	of the Corporation.
24	The testimony shows that the Corporation
25	was in financial difficulty and that there were no

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1 creditors preferred over the Government. The definition, according to the Internal 2 Revenue, of wilfull acts is an act committed with 3 bed faith and motive or specific intent, and without justification. There has been no proof by the 5 ENT Government that this is the case. 6 I therefore request that the counter-claim 7 8 be dismissed. THE COURT: I will reserve decision. 9 10 MR. GROSSMAN: Your Honor, the cases are 11 very clear that wilfull in a civil statute means basically knowledge of what is transpiring and 13 does not require any bad intent. Knowledge of the 14 delinquency and a continued preference of creditors 15 over the United States constitute wilfullness 16 under the statute, and I believe the Government's 17 evidence has indicated knowledge and the prefer-18 ence of creditors over the United States, in that 19 they were paid and continued to be paid even long 20 after the quarters that are involved here. 21 THE COURT: I assume the checks, this big 22 exhibit, is what you rely on for that? 23 MR. GROSSMAN: Well, the checks on their faces indicate that very clearly, that there was 24 a preference of creditors over the Government. 25 THE COURT: All right. I will take tho

	case under advisement.
	MR. GROSSMAN: Will your Honor like to
	have a memorandum?
	THE COURT: What I want to know first is,
	are you gentlemen prepared to submit a memorandum
	with proposed findings and conclusions on the basis
	of notes taken during the trial or will either one
	of you require a transcript?
	MR. GROSSMAN: Your Honor, I would
14	require a transcript, because we do have this other
	case your Honor, I had two bundles of checks
	that I thought were included in that exhibit and
	they were not. Now just taking my stuff
	THE COURT: Two more envelopes? Those are
	what, Exhibit 6?
14	MR. GROSSMAN: Exhibit C.
	THE COURT: That is Exhibit C-1 etc.?
	MR. GROSSMAN: Yes.
	THE CLERK: Exhibit C-1 through C-19.
	THE COURT: Now does this make it C-20?
, 44	THE CLERK: No, Exhibit 1 through C-19.
	THE COURT: Any objection to C-18 and
	19 being added to Exhibit C?
	MR. KALL: No objection, your Honor.
	THE COURT: All right. The case is

1		re-opened for that purpose. Motions previously
2		passed on
3		MR. GROSSMAN: I am sorry, your Honor.
4		I find there are two other packets.
. 5		THE COURT: What about your other brief
6 .		case?
7	*	MR. GROSSMAN: I have only the checks in
8		here.
. 9		THE COURT: Then these checks go through
10		C-1 to C-21. Any objection to that?
11		
Will the said		MR. KALL: No, your Honor.
12		THE COURT: The case is re-opened for the
13		purpose of admission of those Exhibits, and the
14	<b>4</b> (1)	rulings made on the motions previously apply at
15	<b>新</b>	this time.
16	************	(Checks marked as defendant's Exhibits
17		C-18, 19, 20 and 21 in evidence.)
18		THE COURT: Now if you are going to get
		the minutes of the transcript, I have got to fix
19		
20		a time limitation in connection with when you get
21		the transcript rather than today. I don't know
22		when you will get the transcript.
23.		MR. KALL: Mr. Grossman says he needs
24		a cop; for the subsequent trial.
25		THE COURT: I think it would be helpful
		The state of the s

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probably to the Court in at least checking up on your proposed findings to see that it is supported by the evidence and the exhibits.

You should be in a position, should you not, to exchange a memoranda and proposed findings and conclusions of law two weeks after the mailing by the reporter of the transcript to each of you.

I assume you want a transcript too, Mr.

MR. KALL: Yes, I do. I would say I would be in a position unless the transcripts were received say about the middle of March when I am very busy with income tax returns.

THE COURT: How much time do you need?

MR. KALL: My only problem is two weeks. That is fine, but mail usually takes five days. That is my only problem.

THE COURT: Three weeks then.

MR. GROSSMAN: Simultaneously?

THE COURT: Simultaneously exchange of briefs three weeks after the date of mailing out by the reporter of the transcript, together with proposed findings of fact and conclusions of law.

At the time that the brief and proposed findings of law and conclusions are forwarded to

1	your adversary, submit the originals to me at my
2	chambers here in Auburn, by mail. The zip code here
3	is 13021.
4	Now, you gentlemen make your own arrange-
5	ments with the reporter about the delivery of the
6	minutes. Just a minute.
7	MR. GROSSMAN: Our understanding is that
8	three weeks after the transcript is mailed
9	THE COURT: By the reporter.
10	MR. GROSSMAN: That we exchange briefs
11	and proposed findings and conclusions, with copies
12	between counsel and the originals to the Court.
13	THE COURT: Yes. Instead of the Clerk,
14	mail them to me here.
15	MR. GROSSMAN: That is fine, your Honor.
16	Thank you very much. Is there anything further?
17	THE COURT: I just want to be sure that
18	I ruled or that I reserved. I think I will take
19	all motions that were made at the close of allof
20	the evidence. I think this is clearly a factual
21	issue here.
22	MR. KALL: All right.
23	mum course. Co that was to had a file
1 to 1	THE COURT: So that you can brief it on
24	that basis.
25	MR. KALL: Thank you, your Hon r. I

	203
1	appreciate your staying late.
2	
	MR. GROSSMAN: Thank you.
3	THE COURT: All right. Recess now to
4	chambers.
5	THE CLERK: Court stands in recess to
6	chambers.
7	THE COURT: The Clerk will take the
8	exhibits to his office in Utica. If you need them
9	for any purpose. With respect to original
10	documents, I request that you arrange with the
.11.	Clerk to have them photocopied.
11	
12	MR. GROSSMAN: Yes, I will.
13	THE COURT: So you can photocopy them
14	with the Clerk's stamp on them. Or sticker.
15	
16	
17	(Whereupon the above matter was
18	adjourned to chambers.)
19	
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## UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the Division Indicated and Refer to Initials and Number

SPC: GEA: JSBlum: cnp 5-50-2632

February 5, 1976

139-5193 A. Daniel Fusaro, Esquire Clerk, U.S. Court of Appeals for the Second Circuit Room 1702, U.S. Courthouse

Foley Square New York, New York 10007

> Anthony Bersani v. United States (C.A. 2 - No. 75-6061)

Dear Mr. Fusaro:

Enclosed herewith are ten copies of the deferred joint appendix in the above-entitled case which were inadvertently sent to us by counsel for the appellant.

Sincerely yours,

SCOTT P. CRAMPTON Assistant Attorney General Tax Division

GILBERT E. ANDREWS Assistant Attorney General

Enclosures

cc: Sheldon G. Kall, Esquire 3522 James Street Syracuse, New York 13206

